RECORD, CASE No. 13,763.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 175.

JOSEPH DESHA PICKETT AND THEODORE JOHN PICKETT, SOLE HEIRS-AT-LAW OF JAMES C. PICKETT, DECEASED, APPELLANTS,

vs.

GEORGE FOSTER AND MARY J. GWYN, HIS WIFE; AUGUSTUS IRELAND, THOMAS ROUNDY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 14, 1889.

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1 *Bill of Complaint.*

To the honorable the judges of the U. S. circuit court, western dis. of La., holding session at Monroe:

Joseph Desha Pickett, Theodore Pickett, residents and citizens of the State of Kentucky, bring this their bill of complaint against George Foster and his wife, Mary J. Foster, residents and citizens of the p'h of East Carroll, Louisiana; Mrs. Agness M. Scanlen and Mrs. Narcissa J. Green, both residents and citizens of St. Louis, Missouri, and the firm of Ezra Wheeler & Co., of New York city, composed of Ezra Wheeler, Thomas Roundey, and Augustus Ireland, all citizens of the State and city of New York, and say that they are the sole heirs-at-law of James C. Picket, who died intestate on the — day of December, 1872, leaving property in the parish of Carroll (now East Carroll), Louisiana, consisting of three certain promissory notes made by Mrs. Agness M. Ricketts and Mrs. Narcissa J. Bell, both citizens of the parish of Carroll, State of Louisiana. All of said notes are dated January 1, 1866. The first of said notes is for $5,500.00, payable one year after date to the order of James C. Picket. The second of said notes is for $6,000.00, payable to the order of James C. Pickett two years after date, and the third of said notes is for $6,500.00, payable three years after date to the order of

2 James C. Pickett. All of said notes are secured by a special mortgage or deed of trust passed before J. W. Westcall, a Louisiana commissioner for the State of Tennessee, on the 16th of January, 1866, which said deed of trust, signed by the said Mrs. Agness M. Ricketts and Mrs. Narcissa J. Bell, bears upon the following-described property, to wit: "The undivided two-thirds (⅔) interest of the said Mistress Agness M. Ricketts and Mistress Narcissa J. Bell in and to the Jonathan Morgan plantation (so called), in the parish of Carroll and State of Louisiana, the same being a tract of land or plantation of about eighteen hundred acres and the only one in which the said grantors have any interest in said parish of Carroll, Louisiana, the said two-thirds interest being all the interest which the said parties have under and by virtue of the will of the said Jonathan Morgan, late of said Carroll parish."

Complainants allege that all of said notes were executed at Memphis, Tennessee, and made payable at the Farmers' bank, Frankfort, Kentucky, and that by the laws of Tennessee & Kentucky they bear six per cent. interest per annum from the time of their respective maturities. Copies of said notes are annexed hereto for reference and greater certainty, marked Exhibits "A," "B," & "C."

3 "A."

$5,500. MEMPHIS, *Jan. 1st*, 1866.

One year after date we promise to pay to the order of James C. Pickett, Esq., five thousand five hundred dollars, value received, payable at Farmers' B'k, Frankfort, Ky.

A. M. RICKETTS.
N. J. BELL.

"B."

$6,000. MEMPHIS, TENN., *Jan* 1*st*, 1866.

Two years after date we promise to pay to the order of James C. Pickett, Esq., six thousand dollars, value received, rayable at Farmers' B'k, Frankfort, Ky.

A. M. RICKETTS.
N. J. BELL.

"C."

$6,500. MEMPHIS, TENN., *Jan.* 1*st*, 1866.

Three years after date we promise to pay to the order of James C. Pickett, Esq., six thousand five hundred dollars, value received, payable at Farmers' B'k, Frankfort, Ky.

A. M. RICKETTS.
N. J. BELL.

Complainants further allege that said deed of trust was duly inscribed in the Mortgage Book "H," folio 352, of the recorder's office of the parish of Carroll, on the 12th of March, 1866; all of which is shown by a duly certified copy of said deed of trust, hereto annexed for reference and greater certainty, marked Exhibit "D."

4 Complainants further show that in 1873, the said James C. Pickett being dead, his said estate in the parish of Carroll fell under the administration of Benjamin H. Lanier, who held the office of public administrator, and as such by the laws of Louisiana had authority to act as administrator of the estate of said James C. Picket.

That on the 23rd of December, 1873, said B. H. Lanier, public administrator, brought suit to foreclose said deed of trust in behalf of the succession of James C. Pickett, making as parties defendants Mrs. Agnes M. Ricketts (the wife of R. M. Scanlan) and Mrs. Narcissa J. Bell (the wife of John H. Green), both being then residents and citizens of the parish of Carroll, Louisiana, but they are now residents and citizens of the State of Missouri; that Ezra Wheeler, Thomas Roundey, and Augustus Ireland, who composed a firm known as Ezra Wheeler & Co., and were residents and citizens of the State of New York, and who claimed to be owners of part of said Jonathan Morgan plantation, were also made parties defendant; all of which will more fully appear by a duly certified copy of said suit, styled "B. H. Lanier, public administrator, *vs.* Ezra Wheeler & *als.*, No. 6161" on the docket of the district court of the parish of Carroll, hereto annexed for reference and greater certainty, marked Exhibit "E."

5 Complainants allege that on the 30th of December, 1873, said B. H. Lanier, public administrator, filed a supplemental petition alleging that said George Foster, a resident and citizen of said parish of Carroll, was also in possession, claiming as owner, of said Jonathan Morgan plantation, encumbered by said deed of trust, which he was seeking to foreclose; and said George Foster was cited and made party defendant in said suit, styled "B. H. Lanier, public

adm'r, *vs.* Ezra Wheeler and *als.;*" all of which will more fully appear by reference to a certified copy of said supplemental petition contained in said Exhibit "E," on page- 7, 8, & 9.

Complainants allege that all of the defendants in said suit appeared, by their attorneys, Montgomery & Delony, and pleaded to said suit on 2nd of June, 1874; that before any other proceedings were had the said B. H. Lanier resigned as public administrator and one of the defendants, the said George Foster, was appointed by the gove-nor of the State public administrator in the parish of Carroll. He gave bond and qualified as such on the 29th day of April, 1875. His said bond was conditioned for the faithful performance of the duties of his office, and it was for the sum of ten thousand dollars, with the said W. A. Gwyn and Thos. O.
6 Dwyer as sureties on said bond; which said bond was duly recorded on the 6th of May, 1875, in Mortgage Book "N," folios 43 & 44, of the recorder's office of the parish of Carroll, as will more fully appear by a certified copy of his oath and bond, hereto annexed for reference and greater certainty, marked Exhibit "F."

Complainants allege bad faith and fraud against the said George Foster, public administrator, for this, to wit: As public administrator it was his duty in good faith to prosecute the foreclosure of the said deed of trust in the proceedings styled B. H. Lanier, public administrator, *vs.* Ezra Wheeler & *als.*, No. 6161 on the docket of the district court of the parish of Carroll, the same being a pending suit of which he had knowledge, because he was one of the defendants; that by the laws of Louisiana this suit belonged to the succession or in the interest of the succession of James C. Pickett fell under the control of said George Foster from the time of his appointment as public*k* administrator.

Complainants believe and charge that the said George Foster intentional-y sought and obtained the appointment as public administrator in 1875 solely for the purpose of dismissing said suit styled B. H. Lanier, public administrator, *vs.* Ezra Wheeler & *als.*,
7 and of otherwise obstructing and defeating any foreclosure of said deed of trust belonging to the estate of James C. Picket and bearing upon the said Jonathan Morgan plantation, of which said George Foster was in possession as owner.

Complainants charge that said George Foster, being the princip*le* defendant in said foreclosure proceedings and duely interested in defeating the enforcement of said deed of trust, after he had become public administrator did fraudulently continue to dismiss said foreclosure proceedings and did procure the dismissal thereof on the 29 of November, 1875; that he fraudulently caused the attorneys for the defendants (including himself) to demand the calling out *out* of said suit, and when so called out he answered he knew nothing concerning the succession of James C. Picket and declined to prosecute the same. Therefore said suit was dismissed, and on the 4th of December, 1875, he caused his attorneys to have written up and signed a regular judgment dismissing said suit of foreclosure styled B. H. Lanier, public adm'r, *vs.* Ezra Wheeler — *als*, No. 6161; all

of which will more fully appear by copies of the minutes of the court and said judgment of dismissal, on pages 11 and 12 of exhibit marked "E."

8 Complainants allege fraud in the said George Foster in causing the dismissal of said suit; that he fraudulently suppressed said foreclosure, which fell under his administration, with a view to destroy the rights of the succession of J. C. Pickett resulting from said deed of trust bearing on said Jonathan Morgan plantation, which was then and now worth $30,000.00.

Complainants allege that the said George Foster fraudulently availed himself of his office of public administrator to suppress said foreclosure proceedings, and he fraudulently declined and refused to institute any other proceedings to foreclose said deed of trust in favor of the estate of James C. Pickett and bearing on the said Jonathan Morgan plantation, of which he was in possession and claimed to be the owner, intending thereby to despoil the estate of which he was administrator.

They charge that the said George Foster, public administrator, not only suppressed said foreclosure and failed to institute other proceedings to enforce said deed of trust, but he fraudulently withheld from complainants all information with regard to the enforcement of said claim of the succession of James C. Pickett, which fell under his control when he succeeded B. H. Lanier as public administrator.

9 Complainants allege that as heirs-at-law of the said James C. Pickett they are the owners of said claim. They allege that said George Foster at no time since he was appointed public administrator and had control of said claim has communicated to them any information in regard to the progress he was making to collect said claim, they being absentes and having no knowledge as to the illegal conduct of the said George Foster in relation to said claim.

They allege that the said George Foster, by virtue of his appointment as public administrator, obtained the absolute control over said claim and he occupied the relation of trustee towards your complainants; that in suppressing said claim or foreclosure proceedings he sought to despoil your complainants, who owned this large deed of trust, and to enrich himself by fraudulently destroying the value of said deed of trust—suppressing the same—in order to hold and enjoy the said Jonathan Morgan plantation to himself free of said incumbrance.

Complainants allege that they had no knowledge of the unlawful conduct of said George Foster in reference to said claim; that they could get no information in relation to the situation of said claim until the 31st day of October, 1885, when your complainant Joseph D. Picket sent his son, W. H. Picket, from Kentucky to the parish of East Carroll, Louisiana, to examine and find out what had

10 been done by the said George Foster, public administrator, in reference to the preservation of the rights of the succession of James C. Picket resulting from said claim and what had been done

by him toward the foreclosure of said deed of trust against the Jonathan Morgan plantation.

Complainant- alleges that said George Foster, public administrator, purposely neglected to reinscribe said deed of trust and with a fraudulent intent he failed or refused to take any steps, after dismissing said foreclosure, to preserve said claim from being barred by the statute of limitation-.

They charge that, with a view to despoil them, the said George Foster, public administrator, has sought to allow said claim to become barred by the statute of limitations and said deed of trust to be *per*empted, in order to benefit himself and rid, if possible, the Jonathan Morgan plantation of said deed of trust or mortgage.

Complainant- alleges that the said George Foster was not only unfaithful to his trust as public administrator in seeking to allow said claim to prescribe and *per*empt and in suppressing the foreclosure of said deed of trust, but he resorted to every expedient in his
11 power to defeat, if possible, the force and effect of said deed of trust bearing on said plantation.

They charge that he sought to onset said deed of trust by procuring the tax collector on the 10th day of December, 1874, to sell, at tax sale, for his own taxes, the said Jonathan Morgan plantation, and he formed a fraudulent collusion between himself and Ezra Wheeler & Co. and his brother-in-law, W. A. Gwyn (the surety on his bond as public administrator), to have the said W. A. Gwyn become the adjudicate of said plantation at said tax sale for a nominal price, and that he suppressed and withheld from your complainants all knowledge of this fraudulent transaction, and until the 31st day of October, 1885, your complainants had no knowledge of said tax sales; that said tax sales were wholly illegal; that there was no valid assessments, no valid proceeding, to make said sales.

They charge that the said George Foster has been in the actual possession, claiming as owner, — the said Jonathan Morgan plantation since the fifth day of February, 1873, but all the time in bad faith; that the pretended title of the said Esra Wheeler & Co. to a portion of said plantation was a mere show; that they had
12 never had actual control and possession, but that George Foster has had the continuous possession and occupancy all the time of said plantation; that the title taken in the name of said Ezra Wheeler & Co. to one part of the said plantation was a mere contrivance resorted to by said George Foster to defeat, if possible, the operation of said deed of trust belonging to the estate of James C. Pickett, of which said Foster and said Ezra Wheeler & Co. had full knowledge; that the tax titles taken in the name of W. A. Gwyn were mere shams and frauds throughout; that there was no delivery or change of possession resulting from the pretended tax sale to W. A. Gwynn; that George Foster continued in possession, exercising proprietary rights in every respect over said plantation, and still in possession, controlling and managing said plantation for himself.

Complainants allege that as regards the pretended title of Ezra Wheeler & Co. to one part of the plantation it was a mere show and

fraud throughout, concocted by said George Foster with a view to cover up the title and shelter and protect, if possible, that part of said Jonathan Morgan plantation from being subjected to sale under said deed of trust.

13 Your orators further aver that the pretended sale made to John H. Green on the 5th of Sept., 1868, of part of said plantation, as shown by Exhibit "H," and the pretended sale to F. M. Goodrich, made on the 5th Sept., 1868, is shown by Exhibit "I," or the pretended sale to Ezra Wheeler & Co., made on the 2 August, 1873, as shown by Exhibit "J," were absolute nul-ities, being in contravention of a prohibitory law of Louisiana, adjudication having been made for less than the amount of the mortgage or deed of trust of J. C. Pickett, which was duly reserved.

Complainants allege that with a fraudulent intent the said George Foster, by said deeds to W. A. Gwyn and Ezra Wheeler & Co., sought to disguise the fact that he was actual-y claiming to hold as owner the Jonathan Morgan plantation, and he lodged the titles in them merely as parties interposed to shelter and screen, if possible, the Jonathan Morgan plantation from the encumberance of said deed of trust.

Complainants allege that after the laps- of a sufficient period to bar said deed of trust, in the opinion of said George Foster, he caused the said Wm. A. Gwyn to reconvey to him the said Jonathan Morgan plantation on the 16th of December, 1881, for the insignificant price of $5,000.00 stated in the deed, a sum less than the an-ual

14 revenues of the property, which was then and now is in a high state of cultivation; that this reconveyance was a mere show, a part of the original scheme of fraud between said Foster and Gwyn, which was that Gwyn should hold the titles for Foster's benefit until sufficient time should elaps- for the prescription of the claim and pre-emption of the deed of trust and the reconvey- to Foster.

Complainants allege that about the same time, to wit, the 24th October, 1881, Ezra Wheeler & Co., of New York, who never saw the property nor ever *in*tended to be the actual owners thereof, conveyed to George Foster that portion of the Jonathan Morgan plantation to which they had been ostens*a*ble owners by a sham deed ever since 1873.

Complainants allege that after the said George Foster obtained the reconveyance to himself of the said Jonathan Morgan from the said W. A. Gwyn and the said Ezra Wheeler & Co. he immediately procured a suit to be brought against him by his wife, the said Mrs. Mary J. Foster, who is a sister of W. A. Gwyn, and by fraud and col-usion allowed her to recover judgment against him for $2,986.76, with a decree allowing her also to become sep*e*rate in property from her said husband; that under said fraudulent judgment he

15 procured his said wife to issue execution against him and caused the sheriff to sell the said Jonathan Morgan plantation to the said Mrs. Mary J. Foster under her said judgment on the 5th of July, 1887, all of which will more fully appear by a cer-

tified copy of said writ, judgment, and sale, marked Exhibit "G" and annexed hereto for reference.

Complainants allege that the said judgment of Mary J. Foster against her husband, George Foster, was collusive and fraudulent throughout, and without any foundation in fact; that he and his said wife both concocted said device to defraud your complainants; that the sale to the said Mrs. Mary J. Foster of the said Jonathan Morgan plantation under her said fraudulent judgment was but the execution of a fraudulent scheme to put the ostensible title of the said Jonathan Morgan plantation in the name of the said Mrs. Mary J. Foster for the purpose of sheltering and screening said property from the enforcement of said deed of trust or such other demands as your complainants might have against the said George Foster on account of his fraudulent and unfaithful conduct as public administrator, they both knowing the great morral wrong which said George Foster perpetrated against complainants in the conduct of his office as public administrator.

16 Complainants allege that, as a part of the scheme to cover up his property and put it beyond the reach, if possible, of said deed of trust or such other demands as complainants might have, the said George Foster imposed upon said Jonathan Morgan plantation a sham mortgage in favor of Ezra Wheeler & Co. on the 30th of November, 1881, and also a sham mortgage in favor of his brother, John W. Foster, on the 29th of December, 1881, and he procured a fraudulent judicial mortgage in favor of his brother, Alexander H. Foster, on the 17th of Oct., 1881, all of which mortgages are fraudulent and collusive and were concocted by said George Foster and his said brothers and Ezera Wheeler & Co. for the purpose of covering up the property of said George Foster and of putting the said Jonathan Morgan plantation, if possible, beyond the reach of the demand of complainants.

Complainants allege that the adjudication and sale by the sheriff of said Jonathan Morgan plantation to the said Mrs. Mary J. Foster under her said petended judgment was collusive and fraudulent and an absolute nullity; that there was no price paid, no actual *bona fide* change of possession resulting from said adjudication; that the whole scheme was concocted in the interest of George Foster, who employed the counsel, administered the proof, and supervised the execution of the whole scheme from the time the suit was filed

17 till the sheriff gave a deed to Mrs. J. Foster, and that to-day the said George Foster remains in actual possession, absolutely controlling and administering said property as owner, and that his said wife, Mrs. J. Foster, beyond the mere paper title, has no more control and exercises no more proprietary rights over the said Jonathan Morgan plantation than she did before she obtained her said sham judgment and her said fraudulent deed from the sheriff.

Complainants allege that all of said sham mortgages to the brothers of said Foster and to Ezra Wheeler & Co., and also the sham title to the said Mrs. Mary J. Foster, are but family arrangements and parts of one scheme, fraudulently concocted between all

these parties for the purpose of covering up the title and screening the Jonathan Morgan plantation from the pursuit of complainants.

Complainants allege that they have no relief at law, but in equity they ought to be relieved against the frauds, collusions, and combinations of the said George Foster, his wife, his brothers, and Ezra Wheeler & Co., and his brother-in-law, W. A. Gwyn; that in equity your complainants should be restored to all their rights as heirs-at-law of James C. Pickett, just as they existed when said foreclosure proceedings, styled "B. H. Lanier, public administrator, *vs.*
18 Ezra Wheeler & *als.*," were dismissed, on the fourth of December, 1875, by said George Foster, from the docket of the district court of the parish of Carroll; that said deed of trust in equity should now be held to be as binding *as* against said George Foster and his aiders, abetters, and co-conspirators aforesaid as it was on the 4th of December, 1875, and said deed of trust should in equity be held as a *bona fide*, valid claim bearing on said Jonathan Morgan plantation, superior in rank to all other encumberances imposed by the said George Foster and his allies, and all subsequent encumberances or transfers that have heretofore been made by the said Mrs. Agness M. Ricketts and the said Mrs. Narcissa J. Bell or their assigns, all conveyances & transfers being made subject to said deed of trust.

Your complainants allege that said notes marked "A," "B," & "C," secured by said deed of trust, marked Exhibit "D," are due and unpaid, and that as heirs-at-law of said James C. Pickett they are entitled in equity now to have said notes and deed of trust recognized and enforced in this foreclosure proceeding in equity, and they are entitled to have said undivided $\frac{2}{3}$ of said Jonathan Morgan plantation sold under this foreclosure proceeding in equity to pay the amount of said notes, pursuant to the stipulation of said deed of trust.

Your complainants allege that said undivided two-thirds ($\frac{2}{3}$)
19 of said Jonathan Morgan plantation is not now worth over $20,000.00; that it was worth said amount on the 4th of December, 1875, when said George Foster procured the dismissal of said foreclosure proceedings, styled B. H. Lanier, public administrator, *vs.* Ezra Wheeler & *als.*, from the docket of the district court, parish of Carroll aforesaid; that the foreclosure proce-dings now will not realize enough to pay the total amount of their said cla-me, interests, and costs; that the amount of said claim and interest up to the 4th of December, 1875, was about $25,000.00, but now ten years' interest on the original debt at six per cent. amounts to $10,800.00 additional, the loss of which sum your complainants have sustained by the fraudulent conduct of the said George Foster, who was in equity their trustee when he became public administrator as aforesaid, in 1875, and who fraudulently violated his duty as such when he dismissed said foreclosure proceedings on the 4th of December, 1875. Complainants allege that by the laws of Louisiana the of-icial bond of said George Foster, public administrator, operates as a legal mortgage on all the immovable property owned or acquired by him since the 6th of May, 1875, the day his

official bond for $10,000.00 was recorded in the mortgage
20 office of the parish of Carroll, and they use herein to have said legal mortgage recognized and enforced as a general mortgage against all the real property owned or acquired by the said George Foster, ranking from the 6th of May, 1875. They allege that about the time the said George Foster acquired the said undivided two-thirds of the Jonathan Morgan plantation embraced in said deed of trust to J. C. Pickett he acquired also the other remaining third of said plantation, and that the whole of said plantation was reconveyed to said George Foster in the deeds to him from Ezra Wheeler & Co. and W. A. Gwyn, of date Oct. 24th, 1881, and December 16th, 1881, respectively, as aforesaid; and that said remaining third of said Jonathan Morgan plantation not embraced in said deed of trust is also encumbered with the legal mortgage resulting from the registry of the official bond of George Foster in the mortgage office as aforesaid.

Your complainants allege that on the 4th of December, 1875, when said George Foster, public administrator, dismissed said foreclosure, styled "B. H. Lanier, public administrator, *vs.* Ezra Wheeler & *als.*," Mrs. Agness M. Rickets was then the wife of Robert M. Scanlan, and they were property-holders residing in this parish
21 and were parties to said foreclosure proceeding. Since then they have become insolvent, R. M. Scanlan has died, and his widow, Mrs. Agnes M. Scanlan, has removed from this State and resides in Missouri—owns no property either in this State or Missouri, and is uttterly insolvent; that likewise since said foreclosure was dismissed the said Mrs. Narcissa J. Bell, then the wife of John H. Green, has become utterly insolvent; her said husband having died, she has removed to the State of Missouri, has no property of any kind, and is now utterly insolvent; that both of said debtors are now beyond the jurisdiction of this court and have nothing to which jurisdiction can attach.

Your complainants allege that on account of the fraudulent conduct of said Foster in dismissing said foreclosure proceeding and in refusing to prosecute any other suit on said claim they have been deprived of all opportunity to recover against their debtors, Mrs. Agness M. Rickets and Mrs. Narcissa J. Bell, and now their only chance to recover anything on their said claim is on the deed of trust on the Jonathan Morgan plantation and against George Foster on his official bond as aforesaid.

22 Complainants allege that in delaying, hindering, and suppressing said foreclosure proceeding and in failing to institute any other proceeding to protect the rights of the estate of James C. Pickett against the grantors in said deed of trust and against the property embraced in said deed of trust the said George Foster, public administrator, was guilty of "wilful default & official misconduct;" that the loss which has resulted to your complainants is due to the "wilful neglect and default" of their trustee, George Foster, public administrator, in not prosecuting the collection of said claim.

To the end, therefore, that the defendants may full and true an-

swer make unto the complainants' bill (but not under oath, their oaths being expressly waived) and show cause, if they can, why your orators should not have the relief herein prayed; that defendants be decreed to take nothing by or through their aforesaid fraudulent acts and title as against your orators; that the defendants, George Foster and Mary J. Foster, his wife, be decreed to hold said property subject to the mortgage claim of your orators, and that your orators' mortgage may be decreed to be and to have
23 been a subsisting mortgage, to date from the 16th day of January, 1866, unaffected by any of the aforesaid transfers; that an account may be taken of the amount due your orators upon said mortgage in principal and interest, and that said property be sold according to the course of chancery, and that your orators be paid the amount so to be found due them out of the proceeds of the sale by priority over all claims of the defendants; and, further, that an account be taken of the rents and profits made by the said George Foster, or which he ought to have made, since he came into possession of said mortgaged property, and that said Foster, in his capasity as public administrator, may be adjudged to pay of said rents and profits any balance remaining due your orators upon the mortgage debt after the proceeds of the sale have been applied thereto, and that it may be decreed that complainants have a general mortgage upon the whole of said property to secure the amounts aforesaid, as provided by the laws of Louisiana in cases of liability of public administrators upon their official bonds.

And your orators pray for -rits of subpœna against George
24 Foster, Mrs. Mary J. Foster, Mrs. Agnes M. Scanlan, Mrs. Narcissa J. Green, and the firm of Ezra Wheeler & Co. and the members thereof, viz., Ezra Wheeler, Thomas Roundey, and Augustus Ireland, commanding them and each of them to be and appear at a time certain in this honorable court, then and there to answer this bill of complaint and to abide by and perform the further orders and decrees of the court; and your orators pray for all general relief in the premises.

W. G. WYLY,
Att'y & Solicitor.
LUDLING & STILLMAN,
Of Council & Solicitor.

Endorsed: United States circuit court, 5th circuit, western dist. of La. In equity. No. 110. Heirs of J. C. Pickett *vs.* George Foster *et als.* Bill of complaint. Filed November 30th, 1885. J. B. Beattie, d'y cl'k.

25 EXHIBIT "D."

UNITED STATES OF AMERICA.

STATE OF TENNESSEE, }
Shelby County, City of Memphis, } *ss:*

Be it known that this the sixteenth day of January, in the year of our Lord one thousand eight hundred & sixty-six, before me, J.

W. Westcott, a commissioner of the State of Louisiana in and for the city of Memphis, in the county & State first above named, duly commissioned & qualified and residing in said city, personally appeared Mistress Agnes M. Ricketts & Mistress Narcissa J. Bell, the former widow of James P. Ricketts, deceased, late of Woodford county, State of Kentucky, & the latter widow of Clarence W. Bell, deceased, late of Lexington, Fayette county & State of Kentucky, who declared that, for the consideration hereinafter named and expressed, they do by these presents grant, bargain, sell, convey, & set over, with all legal warrants, unto Richard C. Ricketts, Senier, minister, of Midway, Kentucky, as trustee, for the uses and pur-
26 poses following & described herein, and they in fact do hereby convey to said Richard C. Ricketts, Senier, as such trustee, the undivided $\frac{2}{3}$ interest of said Mistress Agnes M. Ricketts & Mistress Narcissa J. Bell in and to the Jonathan Morgan plantation, so called, in parish of Carroll & State of Louisiana, the same being a tract of land or plantation of above eighteen hundred acres & the only one in which the said granters have any interest in said parish of Carroll, Louisiana, the said two-third interest being all the interest which the said parties have under & by virtue of the will of the said Jonathan Morgan, late of said Carroll parish; to have and to hold the said two-thirds of said plantation & its appertenances to the said Richard C. Ricketts, S'n'r, his heirs and assigns forever, subject to the following trusts:

Whereas the said granters are indebted to James C. Pickett, gentleman, of Washington, District of Columbia, in the sum of eighteen thousand dollars ($18,000), lawful money of the United States, evidenced by three several promissory notes of the said granters given to the said James C. Pickett & payable to his order, described
27 as follows: One for five thousand five hundred dollars ($5,500), dated Memphis, Tenn., January 1st, A. D., 1866, and due one year after date; one for six thousand dollars, same date, and due in two years after date ($6,000), and, lastly, one for six thousand five hundred dollars, due in three years after date aforesaid ($6,500); and whereas the said granters are desirous of securing said debts to said James C. Pickett and his assigns, and in consideration of said debts and of one dollar to said granter in hand paid in my presence as commissioner aforesaid, have agreed to make this conveyance to a proper person as trustee; & whereas the said Richard C. Ricketts, Senior, of Midway, Kentucky, is such person and has signified his consent to be such trustee, which will be more fully evidenced by his signature hereto affixed:

Now, therefore, the condition on which the said grant is made and on and for which this trust is created is that the said trustee shall hold the said property in trust for the payment of the
28 said notes in whatsoever hands they may come, and in case they should all be paid at maturity of the same this deed shall be null & void and of no effect in law; otherwise it shall be and remain in full force and vigor, and the said trustee shall have the right, on request of the holder or holders of any of the dishonored paper above named, to take possession of the estate hereby conveyed

& foreclose this deed of trust and the interest of the said granters in the property aforesaid, and till default in the payment of said notes or either or any part of them the said granters shall have the right to the possession of the said estate hereby conveyed, and in full payment of the said notes it is understood & agreed that the said trustee shall make such reconveyance of said estate hereby conveyed to said granters as may be necessary under the laws of Louisiana to extinguish the *lein* of this instrument, and the said James C. Pickett *who* signs this act or deed of sale in satisfaction of the agreements & trusts herein created, he acknowledging the same in the city of Washington, Dist. of Columbia, and the said notes above named,
29 executed by the said grantors, are at date hereof and in my presence delivered to said James C. Pickett, he signing this instrument in token of their receipt, and the said notes marked *ne varietur* & countersigned by me, commissioner aforesaid, for the purpose of identification, & this instrument, under the trusts aforesaid, is this day delivered to the said Richard C. Ricketts, Sen'r, trustee. This done and passed in my office, in this city of Memphis aforesaid, in the presence of Thomas E. S. Cockrell & Moses J. M. Mason, white *white* witnesses of lawful age and domiciled in said city, who hereunto sign their names, together with the said parties, at present domiciliated in the same place, and me, the said commissioner, who sign this act or deed and affix hereto my seal as such commissioner this sixteenth day of January, A. D. 1866.

(Signed) AGNES M. RICKETTS.
(Signed) NARCISSA J. BELL. [SEAL.]

Witness:
THOM. E. S. COCKRELL.
Witness:
MOSES J. M. MASON.

J. W. WESTCOTT,
30 *Commissioner for Louisiana in Tennessee, at Memphis.*

I, Richard C. Ricketts, of Midway, Woodford county, Kentucky, do hereby accept the trust named in the foregoing instrument of writing.

January 31st, 1866.

RICHARD C. RICKETTS, SR.

Witness:
BEN. S. DRAKE.
JAS. F. DRAKE.

STATE OF KENTUCKY, *Fayette County,* } *ss:*

Be it remembered that on this the 31st of January, 1866, before me, Benjamin F. Graves, resident of the city of Lexington, personally appeared Richard C. Ricketts, minister, to me known to be the individual who signed the above, and accepted the within trust as his act and deed for the use & purposes therein mentioned. In

witness whereof I have hereunto signed my name and affixed my official seal the day and date above written.

BENJAMIN F. GRAVES,
Commissioner for Louisiana in Kentucky.

I, James C. Pickett, of Washington city and Dist. of Columbia, do hereby accept and ratify all the provisions of the foregoing &
31 annexed instrument of writing constituting Richard C. Ricketts trustee for certain purposes therein expressed.

Witness my hand & seal this 10th day of February, 1866.

(Signed) JAMES C. PICKETT.

Witnesses:
JOHN D. BLOOR.
ZACH. B. BROOK.
JOHN S. HOLLINGSHEAD.

DISTRICT OF COLUMBIA, }
City and County of Washington, } *ss:*

Personally appeared before me, a notary public in and for said county & district, James C Pickett, who acknowledged that he voluntarily signed the foregoing instrument for the purpose therein mentioned, and I certify also that John D. Bloor & Zach. B. Brooks, witnesses to the signature of said *R*ickett, are to all intents legal and sufficient persons.

In witness whereof I have hereunto signed my name & affixed my official seal the day & date above written.

JOHN S. HOLLINGSHEAD,
Notary Public.

DISTRICT OF COLUMBIA, *To wit:*

32 I, Return J. Meigs, clerk of the supreme court of the District of Columbia, hereby certify that John H. Hollingshead, whose genuine signature is subscribed to the foregoing certificate of acknowledgement, was at the time of signing & attesting the same a notary public for said District duly, commissioned & qualified, authorized to take acknowledgments & to administer oaths, & that his attestation thereto is according to law.

Witness my hand & the seal of said court this 10th day of February, 1866.

R. J. MEIGS, *Clerk.*

STATE OF LOUISIANA, }
Parish of Carroll. }

Before me, David L. Morgan, deputy recorder, duly appointed and sworn, in and for the parish of Carroll, State of Louisiana, personally came & appeared Mrs. Agnes M. Ricketts & Mrs. Narcissa J. Bell, who, being duly sworn, declared & said that the signatures of their names hereto attached in the foregoing deeds was written by them in person on the day & date therein set fourth, & that the same are their own genuine signatures.

(Signed) MRS. AGNES M. RICKETTS.
(Signed) MRS. NARCISSA J. BELL.

33 Sworn to & subscribed before me on this the 6 day of March, A. D. 1866.

DAVID L. MORGAN,
Deputy Recorder.

STATE OF LOUISIANA, }
Parish of Carroll. }

I, M. A. Sweet, recorder in and for said parish & State, do hereby certify that the within deed is a true & correct copy of the original & of record in my official Mortgage Book "11," folios 352 & 353, & in Notarial Book "M," folios 313, 314, 315.

Given under my hand & seal of office this 14th day of April, A. D. 1873.

M. A. SWEET, *Recorder.*

STATE OF LOUISIANA, }
Parish of East Carroll. }

I hereby certify that the foregoing is a true copy from the records of the office, and that the same was duly reinscribed in Mortgage Record V for said parish, on folios 781, 782, 783, & 784, on the 4th day of November, 1885.

Witness my hand and seal of office this 16th day of November, 1885.

WILLIAM ROUS,
Clerk & ex Officio Recorder.

34 STATE OF LOUISIANA, }
Parish of East Carroll. }

I, Wm. Rous, clerk & *ex officio* recorder in and for the parish of East Carroll (formerly the parish of Carroll), duly commissioned and qualified, do hereby certify that the foregoing deed of trust is a true and correct copy of the original, which was recorded in the records of this office on the 12th of March, 1866, in Mortgage Book H, folios 352 & 353, and I do further certify that the same was duly reinscribed by me on the 4th of November, 1885, in Mortgage Book V, folios 781, 782, 783, 784, of the recorder's office of this parish.

Witness my hand and seal of office this the 23d day of November, A. D. 1885.

WM. ROUS,
Clerk and ex Officio Recorder.

Endorsed: Filed Nov. 3d, 1885. J. B. Beattie, d'y cl'k.

35 EXHIBIT "E."

To the honl. the judge of the district court in and for the parish of Carroll, State of Louisiana:

The petition of Benjamin H. Lanier, who appears as public administrator representing the estate of James C. Pickett, dec'd, represents—

That on the first day of January, 1866, at Memphis, Tenn., Mrs A. M. Ricketts, now wife of R. M. Scanlan, & Mrs. Narcissa J. Bell

now the wife of Jno. H. Green, both of your said parish, executed their three joint promissory notes to the order of James C. Pickett, Esq., the first for five thousand five hundred dollars, the second for six thousand dollars, and the third for six thousand five hundred dollars, all payable at the Farmers' bank, Frankfort, Ky., & due respectively in one, two, and three years after the date thereof; all of which notes are the property of the succession of said payee, who has since died, and petitioner ordered by the probate court to take charge of the administration thereof.

Petitioner further shows on the 16th day of January, 1866,
36 the said makers of said notes appeared before the Louisiana commissioner at Memphis, Tenn., & then and there, for the purpose of secureing the said notes, they executed in the form of a deed of trust a special mortgage upon their two-thirds interest in and to that property situated in this parish & known as the "Jonathan Morgan plantation," being a tract of land containing about 1,800 acres, being the only land which they held in said parish under the will of said "Jonathan Morgan;" that said act, deed, & mortgage has been duly recorded in this parish in the recorder's office on the 9th day of March, 1866; that said instrument, although executed in the form of a deed of trust, is, according to the law of Tennessee, where the common law prevails, in truth and legal intendments a mortgage & binds and encumbers said property as such. They show that the makers of said notes have repeatedly acknowledged their indebtedness on said notes, and that due and legal demand on them for payment has been made.

They further show that said mortgaged premises are now
37 in the possession of Ezra Wheeler, Thos. Roundey, Augustus Ireland, & John V. Wheeler, who compose a firm known as Ezra Wheeler & Co. and reside in New York city and who claim to be owners of said property. Petitioners aver- that said property is still affected by the mortgage aforesaid and should be sold in order to secure said debt.

Wherefore petitioner prays that said Mrs. Agnes M. Scanlan & Mrs. Narcissa J. Green be cited to appear in due form, and that Ezra Wheeler, Thos. Roundey, Augustus Ireland, & John V. Wheeler — through a *curator ad hoc;* that after due proceedings petitioner may have judgment for the amount of said notes & interest due thereon; that said mortgage may be recognized to take effect on said property from the 9th day of March, 1866, & that said property be seized and sold in order to pay said debt, interests, & costs, and that a curator be appointed for said absentees, & for costs & general relief.

J. W. MONTGOMERY, *Att'y.*

Dist. Judge is Absent.

J. W. Montgomery, att'y, being sworn, says that the dis-
38 trict judge is absent from the parish.

J. W. MONTGOMERY.

Sworn to and subscribed before me this 23rd day of Dec., 1873.

C. E. MOSS, JR.,
Parish Judge.

Curator Appointed.

It is ordered that C. M. Pilcher be appointed *curator ad hoc* in this case as prayed for Dec. 23rd, 1873.

C. E. MOSS, JR.

I accept appointment as *curator ad hoc.*

CHARLES M. PILCHER.

Endorsed on the back of the foregoing petition are the following words & figures, to wit:

Dist. court. No. 6161. B. H. Lanier, public adm'r, *vs.* Ezra Wheeler & *als.* Petition. Filed Dec. 23rd, 1873 I. J. Galbreth, d'y cl'k.

Citation to Mrs. N. J. Green.

STATE OF LOUISIANA, }
Parish of Carroll. }

District Court.

B. H. LANIER, Public Adm'r, }
vs. } No. 6161.
EZRA WHEELER *et als.* }

The State of Louisiana & said court to Mrs. N. J. Green, residing in said parish & State, Greeting:

39 You are hereby summoned either to comply with the demands contained in the petition of the said B. H. Lanier, public adm'r, a duly certified copy of which accompanies this citation, or to deliver your answer to the said petition in writing in the office of the clerk of the said court, held at Providence, in said parish, within 12 days after service hereof, and according to law.

Witness the Honorable Wade H. Hough, judge of said court, & the seal of said court, this 26th day of Dec., A. D. 1873.

D. JACKSON, *Clerk.*
I. J. GALBRETH, *D. C.*

Sh'ff's Return.

Received, Dec. 26th, 1873, the within citation & certified copy of same, together with a certified copy of plaintiff's petition, and on 27th day of same month and year I served same by leaving the copies with Mrs. A. M. Scanlan, at the residence of Mrs. N. J. Green, in the parish of Carroll.

NICHOLAS BERTON, *Sh'ff.*
By MOSES JACKSON, *D'y.*

Citation to Mrs. A. M. Scanlan.

STATE OF LOUISIANA,
Parish of Carroll.

District Court.

B. H. LANIER, Public Adm'r,
vs.
EZRA WHEELER *et als.*
No. 1616.

40 The State of Louisiana & said court to Mrs. A. M. Scanlan, residing in said parish and State, Greeting:

You are hereby summoned either to comply with the demands contained in the petition of the said B. H. Lanier, public adm., a duly certified copy of which accompanies this citation, or to deliver your answer to the said petition in writing in the office of the clerk of said court, held at Providence, in said parish, within 12 days after service hereof and according to law.

Witness the Honorable Wade H. Hough, judge of said court, & the seal of said court, this 26th day of December, A. D. 1873.

D. JACKSON, *Clerk.*
T. J. GALBRETH, *D. C.*

Sh'ff's Return.

Received, Dec. 26th, 1873, the *written* citation & certified copy of same, together with a certified copy of plaintiff's —, and on 27th day of same month and year I served same by handing the copies to Mrs. A. M. Scanlan, in the parish of Carroll.

NICHOLAS BURTON, *Sh'ff,*
By MOSES JACKSON, *D'y Sh'ff.*

Citation to Ireland et als.

STATE OF LOUISIANA,
Parish of Carroll.

District Court.

B. H. LANIER, Pub. Adm.,
vs.
EZRA WHEELER *et als.*
No. 6161.

41 The State of Louisiana & said court to Ezra Wheeler, Thos. Rounday, Augustus Ireland, John V. Wheeler, absentees; & C. M. Pilcher, curator *ad hoc;* A. M. Scanlan, & N. J. Green, residing in said parish and State, Greeting:

You are hereby summoned either to comply with the demand contained in the petition of the said B. H. Lanier, public adm., a duly certified copy of which accompanies this citation, or to deliver your answer to the said petition in writing in the office of the clerk of said court, held at Providence, in said parish, within 12 days after service thereof and according to law.

Witness the Honorable Wade H. Hough, judge of said court, and the seal of said court, this 23rd day of December, A. D. 1873.

D. JACKSON, *Clerk.*
I. J. GALBRETH, *D. C.*

Sheriff's Return.

Received, Dec. 23rd, 1873, the within citation and a certified copy of same & a certified copy of plaintiff's petition, and on same day, month, and year served the copies on Chas. M. Pilcher, curator *ad hoc* & att'y-in-fact, in person in the parish of Carroll.

NICHOLAS BURTON, *Sh'ff,*
S. FULGUM, *D'y.*

42 *Supplemental Petition.*

District Court, Parish of Carroll, State of Louisiana.

B. H. LANIER, Pub. Adm., }
vs. }
EZRA WHEELER *et als.* }

The supplemental petition of B. H. Lanier, public adm'r, shows that one George Foster, of your said parish, is also in possession of a part of the said "Jonathan Morgan plantation," which is encumbered by plaintiff's mortgage, and that he is a necessary party to this suit, & which he claims as owner.

Wherefore he prays to file this supplemental petition; that said George Foster may be cited as a party, and that petitioner have judgments against him for the sale of the property which he so possesses & claims to own; that said property be held to be subject to pl'ff's mortgage & sold to satisfy plaintiff's demands & interests; for such judgment as may be rendered against Ezra Wheeler & Co. & *als.*, for costs, & general relief.

J. W. MONTGOMERY.

J. W. Montgomery, being sworn, says the district judge is absent from this parish.

J. W. MONTGOMERY.

Sworn to and subscribed before me this 30th Dec., 1873.

C. E. MOSS, JR.,
Parish Judge.

43 It is ordered that this supplemental petition be filed Dec. 30th, '73.

C. E. MOSS, JR.,
Parish Court.

And the foregoing supplemental petition is endorsed in the words & figures following, viz:

No. 6161. "B. H. Lanier, public adm'r, *vs.* Ezra Wheeler & *als.* Supplemental petition. Filed Dec. 30th, '73. David Jackson, clerk."

Citation — Geo. Foster.

STATE OF LOUISIANA, }
Parish of Carroll. }

District Court.

B. H. LANIER, Public Adm., }
vs. } No. 6161.
EZRA WHEELER & *als.* }

The State of Louisiana & said court to George Foster, residing in said parish and State, Greeting:

You are hereby summoned either to comply with the demand contained in the petition of the said B. H. Lanier, public adm., a duly certified copy of which accompanies this citation, or to deliver your answer to the said petition in writing in the office of the clerk of said court, held at Providence, in said parish, within 12 days after service hereof and according to law.

[SEAL.] DAVID JACKSON, *Clerk.*

44 *Sheriff's Return.*

Rec'd, December 30th, 1873, the within citation and a certified copy of same and a copy of plaintiff's petition, and on —— — served the same by handing the copies to Nellie Foster, daughter of defendant, over 14 years of age, in the parish of Carroll, La., the defendant George Foster being absent from home.

NICHOLAS BURTON, *Sh'ff,*
By JOE JACKSON, *D'y.*

Abstract from Minutes of June 2nd, 1874.

TUESDAY, *June 2nd*, 1874.

Court met pursuant to adjournment.

* * * * * * *

B. H. LANIER, Public Adm., }
vs. } No. 6161.
EZRA WHEELER *et als.* }

Exception filed.

Exception.

B. H. LANIER, Public Adm., }
vs. } 6161.
EZRA WHEELER *et al.* }

In this case comes def'ts, for the purpose of this exception, and excepts that Benj. H. Lanier has no cause of action, he never having legally qualified by taking oath & executing bond.

Further, that there was never any succession as the one
45 claimed to be represented by said Lanier, the said Picket never having resided in this parish or owned property in this

parish, and no such succession ever having been legal-y opened in this parish; wherefore they pray that this suit be dismissed at plaintiff's costs and for general relief.

MONTGOMERY & DELONY, *Att'y-*.

Endorsement: No. 6161. Benj. H. Lanier, public adm'r, *vs.* Ezra Wheeler *et als.* "Exception." Filed June 2nd, 1874. C. E. Moss, Jr., d'y cl'k.

Extract from Minutes of June 12th, 1875.

SATURDAY, *June 12th*, 1875.

Court met pursuant to adjournment.

B. H. LANIER, Public Adm., *vs.* EZRA WHEELER & *als.* } No. 6161.

Continued.

MONDAY, *November 29th*, 1875.

At a special term of the honorable the thirteenth judicial district court of Carroll parish, Louisiana, begun and held in the town of Lake Providence, said parish & State, on this the fifth (5th) Monday, 29th day, of November, A. D. 1875.

Present: Honl. Wade H. Hough, judge; Chas. Hicks, sheriff; T. J. Galbreth, D. C.

46 B. H. LANIER, Public Adm'r, *vs.* EZRA WHEELER *et als.* } No. 6161.

B. H. Lanier, public administrator, & George Foster, public administrator, being called to prosecute this suit and failing to do so, it is ordered, on motion of defendants' counsel, that this suit be dismissed at plaintiff's cost. B. H. Lanier answered, through his counsel, that he is no longer public administrator, & George Foster answers that he knows of no such succession as is profes-ed to be administered.

Judgment.

13th District Court, Parish of Carroll, Louisiana.

B. H. LANIER, Pub. Adm'r, *vs.* EZRA WHEELER *et als.* } No. 6161.

This case being regularly called for trial & no one appearing to prosecute this suit, it was ordered that B. H. Lanier be called at the court-house door to appear and prosecute this suit, and Lanier answered, through counsel, that he was no longer public administrator.

It was then ordered that his succes-or, George Foster, be called to prosecute the suit, and upon being regularly called appeared, by

counsel, and answered that he had never had charge of any
47 such succession as James C. Picket, claiming to be plaintiff, and knew of no such estate in the parish of Carroll; therefore, no person appearing to prosecute this suit, the law and evidence being in favor of defendants, it is ordered, adjudicated, and decreed that this suit be dismissed at plaintiff's costs.

Read and signed in open court this 4th of December, 1875.

WADE H. HOUGH,
Judge 13th District.

STATE OF LOUISIANA, }
Parish of East Carroll. }

Eighth District Court.

I, William Rous, clerk of the aforesaid court in and for the above-named parish & State, duly commissioned & qualified, do hereby certify that the above and foregoing twelve (12) pages of writing contains a true, correct, and complete transcript of all the documents filed, all the pleadings & proceedings had, copies of minutes & judgments of court in the case wherein Benj. H. Lanier, public adm., is plaintiff and Ezra Wheeler *et als.* are defendants, and numbered on the docket of the late 13th district court of Carroll parish, Louisiana, 6161.

In testimony whereof I hereunto sign my name offi-
[SEAL.] cially and affix the impress of the seal of the 8th district court of East Carroll parish, La., at my office, on this
48 the 4th day of November, A. D. 1885.

WM. ROUS, *Clerk.*

Endorsed: U. S. circuit court, 5th circuit, western dist. of La. No. 110. In equity. Heirs of J. C. Pickett *vs.* George Foster *et als.* Exhibit "E." Filed Nov. 30th, 1885. J. B. Beattie, d'y cl'k.

49 EXHIBIT "F."

STATE OF LOUISIANA, }
Parish of Carroll. }

Know all men by these presence that we, George Foster, as principal, and Wm. A. Gwyn & Thomas O. Dyer, as securities, are held and firmly bound unto his excel-ency W. P. Kellogg, gove-nor of Louisiana, or his successors in office, in the following sums, to wit: George Foster, as principal, in the full sum of ten thousand dollars, and Wm. A. Gwyn for five thousand dollars & Thomas O. Dyer for five thousand dollars, current money of the United States of America, which we promice to pay to him or to his successors in office, for the faithful performance of which we bind ourselves firmly by these presents, and each of us, our and each of our heirs, executors & administrators, for the amount of the bond thus entered into by each of us individually. The condition of this obligation is such that if the above-bound George Foster shall well and faithfully discharge & perform all of the duties encumbent upon him as public

administrator of Carroll parish, then in such a case the above obligation to be null and void or else to remain in force and virtue.

In faith whereof we have signed these presents at New Orleans, this 29th day of April, 1875.

GEORGE FOSTER.
WM. A. GWYN.
T. O. DYER.

In presence of—
OSCAR F. HUNSOEKER &
JAMES B. WANDS.

50 Approved.

W. C. EVANS,
Judge 1st M. P. Court.

Approved, New Orleans, La., April 29th, 1875.

JOHN CONWAY,
D'y Recorder of Mortgages.

Approved April 29th, 1875.

W. P. KELLOGG,
Gove-nor of La

Personal-y came and appeared before me, the undersianed authority, Wm. A. Gwyn & T. O. Dyer, who, being by me first duly sworn, doth each for himself depose and say that he signed the within bond, and that he is worth the sum of five thousand dollars over and above all his liabilities, in personal property situated in the parish of Orleans.

WM. A. GWYN.
T. O. DYER.

Sworn to & subscribed before me this 29th of April, 1875.

WM. S. HOLMES,
2nd Justice Peace, Parish of Orleans, La.

STATE OF LOUISIANA, }
Parish of Orleans. }

I, the undersigned, deputy recorder of mortgages in and for the parish of Orleans, State of Louisiana, do hereby certify that the within bond has this day — duly recorded in my office according to law, and that a duplicate copy of same is on file in this office, recorded in Book of Bonds No. 102, folio 265, and in Book of Mortgages No. 133, folio 692.

New Orleans, La., April 29th, 1875.

J. M. CONWAY.

51 I, Wm. Rous, clerk for the 8th district court & recorder in and for the parish of East Carroll, State of Louisiana, do hereby certify that the foregoing is a true & correct copy of the bond

on record in my office, recorded in Mortgage Book "N," folios 43 & 44, on May 6th, 1875.

[SEAL.] Witness my hand and seal of office this 3rd day of November, A. D. 1885.

WM. ROUS,
Clerk & ex Officio Recorder.

I, Wm. Rous, clerk of the 8th district court & recorder in and for the parish of East Carroll, State of Louisiana, do hereby certify that the above & foregoing bond was duly reinscribed in Mortgage Book "V," folio 785, on the 5th day of November, A. D. 1885.

[SEAL.] Witness my hand and seal of office this 5th day of November, 1885.

WM. ROUS,
Clerk, ex Officio Recorder.

[Endorsed:] Bond of George Foster, public administrator. Copy.

52 *Oath of Office.*

I, George Foster, do solem-ly swear (or affirm) that I accept the civil & political equality of all men and agree not to attempt to deprive any person or persons, on account of race, color, or previous condition, of any political or civil right, privilege, or immunity enjoyed by any other class of men; that I will support the Constitution and laws of the United States and the constitution and laws of the State, and that I will faithfully & impartially discharge & perform all the duties incumbent on me as public administrator in and for the parish of Carroll according to the best of my ability and understanding, so help me God.

GEORGE FOSTER.

Sworn to and subscribed before me this 29th day of April, 1875.
P. G. DESLOND,
Sect'y of State.

Endorsed: Oath of office. Geo. Foster, public administrator of Carroll parish. Filed May 6th, 1875. T. S. Galbreth, d'y clerk.

STATE OF LOUISIANA, }
Parish of East Carroll. }

I, Wm. Rous, clerk of the 8th district court in and for said parish & State, do hereby certify that the above and foregoing is a
53 true and correct copy of the original oath of George Foster, as public administrator, as taken from the original now on file in this office.

[SEAL.] Witness my hand and seal of office this 5th day of November, A. D. 1885.

WM. ROUS,
Clerk 8th District Court.

U. S. circuit court, 5th circuit, western dist. of La. No. 110. Heirs of J. C. Pickett *vs.* George Foster *et als.* Exhibit "F." Filed November 30th, 1885. J. B. Beattie, d'y cl'k.

54 EXHIBIT "G."

In the 8th District Court of the Parish of Carroll.

MARY J. GWYN
vs.
GEORGE FOSTER. } No. 270.

U. S. Circuit Court, 5th Circuit, Western Dist. of La.

HEIRS OF J. C. PICKETT
vs.
GEO. FOSTER *et als.* } No. 110.

EXHIBIT "G." Filed Nov. 30th, 1885. J. B. Beattie, D'y Cl'k.

55 To the hon. the judge of the 8th district court in and for the parish of East Carroll, Louisiana:

The petition of Mary J. Gwyn, wife of George Foster, a resident of said parish, with respect shows that on the 7th day of October, 1874, she was mar-ied to said George Foster, in the city of Brooklyn, State of New York, and that ever since their said mar-iage they have resided in your said parish, the said Foster being at the time & prior to the time a resident of said parish.

She shows that for some time prior to their said mar-iage the house of Foster, Gwyn & Co., a commercial firm located and doing business both in the city of New York & New Orleans, of which said George Foster was the senior partner, had in their hands funds belonging to your petitioner amounting, to two thousand nine hundred and eighty-six $\frac{76}{100}$ — in the year 1872; that said sum was placed in the hands of said Foster, Gwyn & Co. by Mrs. Isabella Putnam, her sister, and was donated by said Mrs. Putnam to petitioner and placed, by her direction, on the 1st day of July, 1872, to the credit of petitioner in said house in New York, at which time a note was by them executed in favor of petitioner for said sum of
56 twenty-nine hundred and eighty-six $\frac{76}{100}$ dollars — 7% per cent. per annum from date, which note remains unpaid to this date; that as a member of said firm he was indebted to her *in solido* with the other members of the firm in said sum, with whatever interest had accrued thereon, prior to their said mar-iage. She alleges, further, that her said husband has received said money and used the same for his own purposes, & that owing to the disorder of his affairs she fears that he will not be able to reimburse the same and that she will lose it.

Wherefore she prays that she be allowed and authorised to institute this suit; that her said husband, George Foster, be cited to answer hereto; that on the trial there be judgment of seperation of property; that the community of acque-ts & gains subsisting between plaintiff & defendant be dissolved and she be allowed to renounce the same; that she be allowed to administer her own affairs, free from the controll or interference of her said husband, and finally that she have judgment against him for said sum of twenty-nine

hundred and eighty-six $\frac{76}{100}$ dollars, with 7% interest from 1st July, 1872, until the 7th day of October, 1874, and 5% per annum
57 interest from judicial demand till paid; for costs of suit & general relief.

F. F. MONTGOMERY, *Att'y.*

Upon reading the foregoing petition it is ordered that the petitioner be, and she is hereby, authorised to institute this suit, and to stand in judgment.

Done and signed this the eighth day of December, A. D. 1881.

E. J. DELONY,
Judge 8th Judicial District.

Endorsed on the back of the foregoing petition are the following words and figures, to wit:

"No. 270." "Mary J. Gwyn *vs.* George Foster," pet. "Filed Dec. 5th, 1881." F. H. G. Taylor, d'y cl'k.

58 *Answer.*

MARY J. GWYN
vs.
GEO. FOSTER.

And now comes def'd't & for answer admits the mar-iage, but denies general-y each and every allegation in plaintiff's petition, prays that plaintiff's demand be rejected with costs, and general relief.

CHAS. M. PILCHER, *Att'y.*

The foregoing answer is endorsed as follows:

"Mary J. Gwyn" *vs.* "Geo. Foster." Answer. "Filed July 5, '82." "F. H. G. Taylor, d'y clerk."

59 *Extract from Minutes of July 5, '82.*

WEDNESDAY, *July 5th*, 1882.

Court met pursuant to adjournment.

Present: His honor E. J. Delony, judge; John B. Stone, Esq., district attorney; M. S. Powell, sheriff, & F. H. G. Taylor, deputy clerk.

* * * * * * *

MARY J. GWYN
vs.
GEORGE FOSTER. } No. 270.

This case was regularly called, taken up, and tried. Judgment for pl'ff. See decree.

Decree of Court.

8th Dist. Court, Parish of East Carroll, Louisiana.

MARY J. GWYN
vs.
GEORGE FOSTER. } No. 270.

This case coming up regularly for trial, and being tried, and the law & the evidence being in favor of the plaintiff and against the defendant—

It is therefore ordered, adjudicated, & decreed that plaintiff have judgment of separation of property, and that the community of acque-ts and gains subsisting between the parties be, and the same is, dissolved, & that plaintiff be authorized to administer her own affairs free from the control or interference of her said husband.

It is further *endorsed*, adjudged, & decreed that plaintiff do have and recover of the defendant the sum of twenty-nine hun-
60 dred and eighty-six $\frac{76}{100}$ dollars, with 7 % per annum interest from the 1st day of July, 1872, until the 7th day of October, 1874, 5 % interest from judicial demand, to wit, the 8th day of December, 1881, till paid, & all costs of suit.

Read and signed in open court on this the 6th day of July, A. D. 1882.

E. J. DELONY,
Judge 8th Judicial District.

"Endorsed: No. 270. Mary J. Gwyn *vs.* George Foster. Judgment." Filed July 6, '82. F. H. G. Taylor, d'y clerk.

Note of Evidence.

STATE OF LOUISIANA, }
Parish of East Carroll. }

8th District Court.

MARY J. GWYN
vs.
GEORGE FOSTER. } No. 270.

JULY 5, '82.

Upon trial of the above-entitled cause this day the following evidence was taken:

Pl'ff offers in evidence—

1st. A sworn statement from the books of Foster, Gwyn & Co., marked "A."

2nd. The depositions of Wm. A. Gwyn, marked "B."

3rd. The papers in the suit styled 4th Nat'l Bank of N. York *vs.* George Foster.

MONTGOMERY, J. W., testifies:

61 Judge J. W. Montgomery, being duly sworn, says that he was the att'y of the 4th Nat'l Bank of N. York in the suit of said bank *vs.* George Foster; that he knows that the claim in that suit has not been paid.

Plaintiff offers also the mortgage of George Foster to John W. Foster, recorded in this parish in Mortgage Book "U," folios 549 & 550.

MONTGOMERY, F. F., testifies:

F. F. Montgomery, being duly sworn, says that he knows a good deal about Mr. Foster's affairs, & he knows him to be in a very cramped condition.

I hereby certify that the foregoing is all the evidence offered & taken in the trial of this case.

F. H. G. TAYLOR, *D'y Clerk.*

Shown Statement from Books of Foster, Gwyn & Co.

"A."

Mrs. Isabella G. Putnam, adm'x, in ac. with Foster, Gwyn & Co.

1872.			
Ap'l 21.	To cash, W. E. Putnam		$106 35
June 30.	" int. 10 %		2 12
			108 47

CREDIT.

February 1.	By balance	2,971 46		
July 1.	" interest	123 77		
			3,095 23	
"	" balance at credit			2,986 76

Transferred to ac. Mary J. Gwyn.

62 STATE OF NEW YORK, }
City & County of New York. }

Asa R. Cassidy, being duly sworn, says that he was book-keeper for Foster, Gwyn & Co. in the year 1872, and that the above and foregoing is a true and correct abstract from the books of said firm at the time it bears date.

ASA R. CASSIDY.

Sworn to & subscribed before me on this the 28th day of October, A. D. 1881.

[SEAL.] JNO. A. HILLERY,

A Commissioner for the State of Louisiana in New York City.

Interrogatories to Wm. A. Gwyn.

8th District Court, Parish of East Carroll, Louisiana.

MARY J. GWYN
vs.
GEORGE FOSTER.

Interrogatories to be propounded to Wm. A. Gwyn, of the city of New Orleans, Louisiana, the answers to which to be read in evidence on the trial of the above-styled suit on behalf of the plaintiff.

Interrogatory 1st. Be pleased to state your age and residence, and state if you know the parties to this suit. State what, if any, relation you are to them or either of them.

Interrogatory 2nd. State whether or not you were a mem-
63 ber of the late commercial firm of Foster, Gwyn & Co. and of Foster & Gwyn, of New York & New Orleans, and state, also, whether or not the defendant was the senior member of said firm.

Interrogatory 3rd. State whether or not the plaintiff herein ever had any money in the hands of said firm; and, if so, how much, and from whom did she get it, and when was it in their hands.

Interrogatory 4th. State whether — not said money went into the hands of the defendant as the liquidator of said firm or as successor to them, and if he became bound for the payment of the same to her.

Interrogatory 5th. Please state under this general interrogator-anything you may know of benefit to plaintiff in this suit, and give the whole transaction relative (to) the money above enquired of, how the same came to be in the hands of said firm, the amount and interest it was to bear, or anything else you may know.

F. F. MONTGOMERY, *Att'y.*

64 *Answer of W. A. Gwyn.*

Depositions of William A. Gwyn, of New Orleans, taken under the above interrogatories on this the sixteenth day of December, A. D. 1881, before the undersigned, a duly qualified notary public in and for the parish of Orleans, State of Louisiana, authorised to administer oaths, &c., and is taken for use in the above-entitled cause, pending in the 8th judicial district court of the State of Louisiana for the parish of Carroll, between Mary J. Gwyn & George Foster.

Said WILLIAM A. GWYN, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth, answered to the first interrogatory:

Am aged about forty-four years; a resident of New Orleans, Louisiana; I know both of them; I am brother to the plaintiff.

To the second interrogatory said W. A. Gwyn answered: I was; he was.

To the third interrogatory said W. A. Gwyn answered: She did; twenty-nine hundred and seventy-one $\frac{46}{100}$; received by Foster, Gwyn & Co. for her account from Mrs. Issabella Putnam on
65 February 1st, 1872. It was received by that firm of Feb. 1st, 1872, and when I left that firm, in 1874, it still remained there, and George Foster, plaintiff's husband, assumed its payment.

To the fourth interrogatory said W. A. Gwyn answered: Yes.

To the fifth interrogatory said W. A. Gwyn answered: It was a sum received by my then firm from estate of Mrs. Issabella Putnam for account of Mrs. George Foster as a collection, and while with us we were to allow eight per cent. interest per annum. It remained with us until the firm dissolved, & then George Foster, husband of plaintiff, took the assets and assumed the liabilities of that firm.

WM. A. GWYN.

And I, Andrew Hero, Jr., notary public as aforesaid, *to* certify that the above depositions of William A. Gwyn was taken down under oath as aforesaid & reduced to writing by me in his presence; that said answers were by me read over to and approved by
66 him, and that therefore said answers were sworn to and subscribed by said W. A. Gwyn before me, notary, on this December 16, 1881.

As witness my hand & seal.

[SEAL.] ANDREW HERO, JR., *Not. Pub.*

The foregoing interrogatories and answers are endorsed in the following words and figures, to wit:

"B." No. 270. Mrs. Mary J. Gwyn *vs.* George Foster. Interrogatories to be answered by Wm. A. Gwyn. Filed Dec. 29, '81. F. H. G. Taylor, d'y clerk.

Be it remembered that on the 5th day of May, A. D. 1884, for the purpose of satisfying the judgment herein rendered, the following *fi. fa.* issued, to wit:

THE STATE OF LOUISIANA,
Parish of East Carroll.

8th District Court.

MARY J. GWYN
vs.
GEORGE FOSTER. } No. 270.

The State of Louisiana & said court to the sheriff of the parish of East Carroll, Greeting:

67 We command you that by seizure and sale of the property, real & personal, rights and credits of George Foster in the manner prescribed by law, you cause to be made the sum of twenty-nine hundred and eighty-six $\frac{76}{100}$ dollars, with 7% per annum interest from the 1st day of July, 1872, until the 7th day of October,

1874, & 5% interest from judicial demand, to wit, the 8th day of December, 1881, till paid, and $1.10, the costs of this writ, and your own costs to satisfy a judgment lately rendered in our said court against the said George Foster and in favor of the said Mary J. Gwyn; and of how you shall have executed this writ you make return to our said court in seventy days, as the law directs.

Witness the Honorable E. J. Delony, judge of said court, and the seal of said court, this the 5th day of May, A. D. 1884.

[SEAL.] C. A. HEDRICK, *Clerk*,
By F. H. G. TAYLOR, *D'y Clerk*.

Return of Sheriff.

Received the within writ of *fi. fa.* on the 5th day of May, 1884, & on the 6th day of same month and year seized and took into my possession the following-described plantation, notice of which
68 seizure I gave on same day to the defendant in person in the parish of East Carroll, La., and appointed J. P. Alexander the keeper thereof: The plantation known as Pecan Grove and described by numbers, according to official survey, as lots 41, 42, 43, & 44 & part of 48, T. 19 N., R. 13 E.; lot No. 1 & N. ½ of lot No. 2, T. 19 N., R. 14 E.; lots 7 & 8, T. 19, R. 13 E., containing 1,100 acres, more or less. On the 31st day of May, 1884, I advertised said property for sale in the East Carroll Democrat, a newspaper published weekly in said parish & State, to be sold at the door of the court-house, in the town of Lake Providence, La., on the first Saturday, the 5th day of July, 1884, with the benefit of apprais-ment, for cash, and on said day of sale, between the hours prescribed by law, at the place aforesaid, after having the said property duly appraised and after reading this writ, together with the recorder's certificate of mortgage & the advertisement, I offered the same for sale at public auction in an audible voice; whereupon Field F. Montgomery, att'y for Mrs. Mary J. Gwyn, became the purchaser for the price
69 and sum of $15,414.93, the said sum being the amount of the mortgages upon the said plantation; which sum the said Mrs. Mary J. Gwyn retained in her hands to pay said mortgages, and he, the said att'y, being the highest and last bidder the property was adjudicated to the pl'ff in this suit, Mrs. Mary J. Gwyn, & I return this writ unsatisfied this 8th day of July, 1884, the costs in this suit, $53.58, having been paid in cash.

M. S. POWELL, *Sheriff*,
By G. W. FOSTER, *D. S.*

Endorsed: No. 270. Mary J. Gwyn *vs.* George Foster. "*Fi. fa.*' Returned & filed July 8, 1885. Wm. Rous, clerk.

70 Geo. Foster to Jno. W. Foster. } Mortg.

STATE OF LOUISIANA, *Parish of East Carroll.*

Be it known that this day, before me, Sanders D. Oliver, a notary public duly commissioned & qualified in and for said parish and State, & in the presence of the witnesses hereinafter named and undersigned, personally appeared George Foster, a resident of this said parish & State, who declared unto me, notary, that he is justly & truly indebted unto John W. Foster, a resident of the city of Washington, in the District of Columbia, in the sum of six thousand dollars ($6,000.00), good and lawful money of the United States of America, in evidence of which the said George Foster has this day executed his certain promissory note for said sum, payable to the order of said Jno. W. Foster, at the office of Messrs. Drexel, Morgan & Co, New York city, on the tenth day of January, A. D. 1885, with 8% per annum interest thereon after maturity; which said note I, the said notary, have this day marked "*ne varietur*" and signed officially, in order to identify the same with this act, and have delivered said note to Field F. Montgomery, of this parish &
71 State, who is present, acting as the agent & attorney-in-fact for the said John W. Foster and accepting this act in his behalf.

Now, in order to secure the full & final payment of said note, together with the interest that may accrue thereon, the said George Foster further declared that he does hereby specially mortgage, affect, & hypothecate unto and in favor of the said Jno. W. Foster, as well as in favor of any & all future holder or holders of said note, the following-described property, to wit:

All & singular those certain tracts or parcels of land, together with the buildings & improvements thereon, situated in this said parish & State, bounded and described as follows, viz:

First. A tract of land fronting on the Mississippi river, bounded above by the Railey plantation, below by lands of George R. Newman, & in the rear by lands of the heirs of Wm. Henderson, & composed of lots No. 41, 42, 43, & 44 & part of lot No. 48, in township No. 19 north, range No. 13 east, & lot No. 10, north half of lot No. 2, in township No. 19 north, range No. 14 east.

Second. A tract of land fronting on the Mississippi river,
72 bounded above by lands of George R. Newman and below by lands of the heirs of Wm. Henderson, closing to a point in the rear, & comprised of lots No. 708, in township No. 19 north, range No. 14 east; and,

Third. A tract of land or plantation composed of the north half of section No. 56 and the south half of lot No. 5, in township No. 19 north, range 13 east, and bounded, south by the Carondelet plantation, belonging to Mrs. Montgomery, east by Carondalet plantation & lands of I. B. Beard, north by Galloway & Hlawara places, & west by the Ballard place, all being the same property acquired by this

mortgage or by purchase from William A. Gwyn, of the city of New Orleans, in the State —, as per deed passed before Andrew Hero, Jr., a notary public in and for the parish of Orleans, State of Louisiana, on the 16th day of December instant, A. D. 1881, and duly recorded in the recorder's office of this parish.

And the said George Foster hereby binds himself not to mortgage, alienate or encumber said property to the prejudice of this
73 mortgage.

Now, the said F. F. Montgomery, agent & att'y-in-fact for the said John W. Foster, declared that he does hereby dispense with the production of the mortgage certificate required by article 3364 of the civil code of this State & holds me, notary, harmless for the non-production of the same at the passing hereof.

This done and passed, at my office, in the town of Providence, parish of East Carroll, State of Louisiana, in the presence of George J. Hook & John W. Montgomery, witnesses of lawful age, residing in this parish, who hereto sign their names, together with the said appearers and me, notary, on this the 29th day of December, A. D. 1881.

GEO. FOSTER,
JOHN W. FOSTER,
By F. F. MONTGOMERY,
Ag't & Att'y-in-Fact.

Attest:
GEORGE J. HOOK.
J. W. MONTGOMERY.

S. D. OLIVER,
[SEAL.] *Notary Public.*

Filed Dec. 29th, 1881.

GEORGE J. HOOK,
D'y Recorder.

Duly recorded in Mortgage Book "U," folios 549 & 550.
74 Given under my hand and seal of office this 29th day of Dec., 1881.

GEORGE J. HOOK,
D'y Recorder.

STATE OF LOUISIANA,
Parish of East Carroll.

Eighth Dist. Court.

MARY J. GWYN
vs.
GEO. FOSTER. } No. 270.

Sheriff
to
Mary J. Gwyn. } Deed.

Be it known that by virtue of a writ of *fi. fa.* issued from said court in the above-styled case and to me directed, commanding me

to seize and sell the following-described property belonging to the defendant:

The plantation known as Pecan Grove and described by numbers, according to official survey, as lots No. 41, 42, 43, 44, & part of 48, T. 19 N., R. 13 E.; lot No. 1 & N. ½ of lot No. 2, T. 19 N., range 14 E.; lots 7 & 8, T. 19 N., range 14 E.; also N. ½ of section 56, S. ½ of lot 5, T. 19 N., range 13 E.—

I, M. Shelby Powel, sheriff in and for the parish of East Carroll, State of Louisiana, duly commissioned & sworn, did, on the 6th day of May, A. D. 1884, seize the above-described property, notice of which seizure I gave to George Foster, defendant, in writing,

and on the 31st day of May, A. D. 1884, I advertised
75 said property for sale in the East Carroll Democrat, a newspaper published weekly in said parish and State, to be sold at the door of the court-house in the town of Providence, in said parish & State, on the 1st Saturday, the 5th day, of July, A. D. 1884, for cash, with the benefit of appraisement, and on said day of sale, between the hours prescribed by law, at the place aforesaid & after having the advertisement of sale and the recorder's certificate of mortgage, I offered the same at public auction in an audible voice; whereupon Mrs. Mary J. Gwyn became the purchaser thereof for the price & sum of fifteen thousand four hundred and fourteen $\frac{93}{100}$ dollars, she being the highest and last bidder, the said property was adjudicated to her. Now, in consideration of the premises & by virtue of the authority in me vested by the laws of the State of Louisiana, I do hereby sell & adjudicate unto the said purchaser all the rights, title, interest, & claim which the said George Foster has or had in and to said property; to have and to hold the same unto the said purchaser, her heirs and assigns, for her and their own proper use, benefits, & behoof forever.

76 In testimony whereof I hereunto sign my name officially together with G. W. Foster & T. J. Powell, witnesses of lawful age residing in said parish & State this the 8th day of July, A. D. 1884.

M. S. POWELL, *Sheriff.*

Attest:
G. W. FOSTER.
T. J. POWELL.

Filed for record July 8th, 1885, and on the 8th day of July, 1885, I duly recorded the within deed in this office in Notarial Book "R," on folios 380 & 381.

Witness my hand and seal of office on this the 14th day of July, 1885.

[SEAL.] WM. ROUSE, *Recorder.*

Proceedings Had in the Case of the 4th Nat'l Bank of New York vs. George Foster, No. 7047.

Petition.

To the honl. the judge of the district court in and for the parish of East Carroll:

The petition of the Fourth National Bank of the City — New York, a corporation duly and legally chartered and doing business in said city, represents that George Foster, of your said parish, is indebted unto your petitioner in the sum of twelve thousand dollars, with 8% per annum
77 interest thereon from the 7th June, 1872, subject to a credit of $6,000 paid thereon on 30th April, 1873, and also for the amount of the interest up to June 30th, 1873, for this, that on the 7th of June, 1872, petitioner loaned unto the commercial firm of Foster, Gwyn & Co., then doing business in New York city, the sum of twelve thousand dollars, which sum they promised to pay in eleven months, with said rate of interest, from date; that in order to secure said loan the said firm delivered to your petitioner, to be held as col-ateral, one hundred & thirty shares of the stock of the 1st National Bank of Memphis, and that on the 30th April, 1873, the said George Foster, a member of said firm, paid the sum of six thousand dollars on said debt and took up and redeemed forty shares of said stock, leaving ninety shares thereof still in possession of petitioned for the purpose aforesaid.

Further, that petitioner presented said stock to the proper officers of said bank at Memphis, with a demand for the transfer thereof, which demand was refused, and your petitioner has not been able to realize anything on said stock security, although suit has been instituted against said bank for that purpose.

78 Wherefore petitioner prays that said George Foster be cited, and that, after proceedings, petitioner may have judgment against him for said sum of twelve thousand dollars & interest aforesaid, subject to the credits aforesaid, for costs and general relief.

J. W. MONTGOMERY, *Att'y.*

Counsel for Def't Accept.

We accept service & waive citation to save costs, reserving all delays & defenses.

MONTGOMERY & DELONY, *Att'ys.*

"Endorsed: No. 7047. District court. Fourth National Bank of the City of New York *vs.* George Foster." Petition. Filed April 17th, 1877. R. J. Lindon, d'y clerk.

79 *Answer.*

13th District Court, Parish of East Carroll.

FOURTH NATIONAL BANK OF NEW YORK
vs.
GEORGE FOSTER. } 7047.

The defendant, George Foster, comes into court and for answer denies that he owes the plaintiff as set fourth or in any manner whatever. He admits that the house of Foster & Gwyn contracted a loan with the plaintiff for amount and at the time set forth, but that the same was to bear only 7 % per annum interest, & that it was a called loan, to be paid on demand or whenever called for; that the same was secured by one hundred & thirty shares of the stock of the 1st National Bank of Memphis, forty of which shares were the individual property of this respondent and the balance belonged to his partner, Gwyn, of which fact the plaintiff was fully advised. Further answering, he shows that in the spring of 1873 the firm of Foster & Gwyn dissolved and closed up their partnership business; that at the time this respondent notified the plaintiff of the dissolution of the firm, and that they were then closing the busi-
80 ness, and proposed to pay his portion of the said debt and withdraw his collaterals, to wit, the forty shares of 1st Nat'l Bank of Memphis, and that the bank should look to Gwyn and the balance of the collateral for the balance of the debt. This proposition was acceeded to, and he did accordingly pay one-half of principal & interest of said debt, leaving the balance to be paid by Gwyn; that the collateral so placed in the hands of the plaintiff was ample to pay said debt, being worth $1.50 on the dollar, but that plaintiff failed to use same and *were* guilty of laches; that since that time the stock of the First National Bank of Memphis has greatly declined, and it is an after-thought of plaintiff's to hold this defendant for same in violation of his understanding as aforesaid.

Wherefore he prays that plaintiff's demand be rejected & for general relief.

MONTGOMERY & DELONY, *Att'ys.*

Endorsed: Filed Dec. 7th, 1877. T. J. Galbreth, d'y clerk.

81 *Interrogatories to W. W. Thacher.*

13th District Court, Parish East Carroll, Louisiana.

FOURTH NAT'L BANK OF NEW YORK
vs.
GEORGE FOSTER. } 7047.

Interrogatories to be propounded to William W. Thacher, of Memphis, State of Tennessee, the answers to which to be read in evidence on the trial of this case on behalf of defendant.

Intg. 1st. State whether or not you were an officer of the First National Bank of Memphis, Tenn., in 1873; and, if so, what position did you then hold in said bank.

Intg. 2nd. Were you not well acquainted with the affairs of said bank, & do you know what the stock in same was worth in, say, July of that year?

Intg. 3rd. If you say you know the value of stock in the said bank at that time, state what it was, and state whether you sold any for any one; &, if so, for whom, how much, and at what price.

Intg. 4th. State if there was any dif-iculty in selling the stock at that time.

Intg. 5th. State anything else you may know of advantage
82 to defendant not herein special-y inquired of.

Cross-Interrogatories of Plaintiff.

X Intg. 1st. If you state in answer to 3 interrogatory-in-chief that you sold any of said stock, state to whom you sold it.

X Intg. 2nd. Was or was nôt pl'ff in this the pledgee of a portion of said bank stock? If you answer yea, be pleased to state what plaintiff did with it; state also what steps the pl'ff took to secure said stock, & what plaintiff did to make it available.

X Intg. 3rd. Did not plaintiff demand of bank to have said stock so pledged transfer-ed on the books to it, the pl'ff?

X Intg. 4th. Did not the pl'ff endeavor to coerce the bank at Memphis to transfer to it, pl'ff, the said stock so pledged; and, if so, whether pl'ff succeeded in such endeavor, & did not pl'ff fail to make such stock available, & has it not been a dead loss to pl'ff? In answering this cross interrogatory be pleased to state everything the plaintiff has done to realize on said pledge stock.

83 X Intg. 5th. Be pleased to state what has been the value of said bank stock during the last three years and what it's worth now.

J. W. MONTGOMERY.
Att'y for Pl'ff.

STATE OF TENNESSEE,)
County of Shelby.)

Be it remembered that on the day of the date hereof, at my office, in the city of Memphis, I, Hinsdon Cary, a commissioner for the State of Louisiana in and for the city of Memphis, in the State & county first aforesaid, duly commissioned and sworn and empowered to administer oaths & take depositions, acting under and by virtue of the annexed interrogatories & cross-interrogatories in the case entitled Fourth National Bank of New York *versus* George Foster, being No. 7047 of the docket of the 13th district court for the parish of East Carroll, Louisiana, have this day caused William W. Thacher, the witness named in the interrogatories, who resides in Shelby county, to come before me, &, after having duly sworn him to answer truly to said interrogatories & the cross-interrogatories annexed hereto, he answers as follows:

84 To the first interrogatory he answers: I was an officer of the 1st National Bank of Memphis during the year 1873. I held at that time and do no- the position of cashier.

To the second int'g'y he answers: I was well acquainted with the

affairs of the bank & know what the stock was sold at up to August of that year. None was sold that I recollect of after that time during the year.

To the third intg. he answers: The stock of the bank was valued at one hundred & fifty during the first six months of 1873. January 4th, 1873, I sold for Thomas A. Hamilton ten shares at one hundred and fifty dollars per share to Louis Ranger, and January 26th, 1873, I sold to Gaze & Fisher, of Memphis, forty shares belonging to and standing in the name of George Foster at one hundred and fifty dollars per share, being fifty per cent. premium.

To the fourth intg. he answers: There was no difficulty in selling the stock at that time.

85 To the fifth intg. he answers: I know of nothing of advantage to defendant.

To the 1st cross-intg. he answers: I have already stated that I sold ten shares to Louis Ranger for account of T. A. Hamilton & forty shares to Gaze & Fisher for account of George Foster.

To the 2od X intg. he answers: The plaintiff was the pledge- of ninety shares of the First National Bank stock standing in the name of Samuel Gwyn. The plaintiff made demand on the First National bank, Memphis, through the Manhattan Bank of Memphis, to transfer said ninety shares to the name of the Fourth National Bank of New York.

To the 3rd X intg. he answers: The plaintiff made demand to have said stock transferred, as answered in the last cross-intg.

To the 4th X intg. he answers: Plaintiff endeavored to compell the bank to transfer to it the nin-ty shares standing in the name of Samuel Gwyn, but the transfer was refused for the reason

86 that we had been enjoined from making the transfer by the heirs of the Garvin estate, of Louisville, Ky., who claimed that the stock was bought by Gwyn with their money. On trial it was proved to be the case & the supreme court of the State of Tennessee ordered its transfer to said heirs, which was done, and the plaintiff derived no benefit from the stock. The plaintiff fought the suit through all our courts. The forty shares standing in the name of George Foster was not pledged to the 4th National bank when sold by me & no demand was made on me by the 4th National Bank of New York or its agents to transfer it to them.

To the 5th X intg. he answers: But little stock has been on the market the past three years. It can be readily sold at sixty-five cents.

And further deponent saith not.

WILLIAM W. THACHER.

Subscribed & sworn to before me this 28th day of April, 1880.

[SEAL.] HUNSDON CARY,
Commissioner.

And I further certify that his answers were reduced to writ-

87 ing by me, & that he signed his said answers in my presence.

Witness my hand and official seal this 28th day of April, 1880.

HUNSDON CAREY,
Commissioner for Louisiana at Memphis, Tenn.

Endorsed: "Fourth Nat'l Bank of N. Y. *vs.* Geo. Foster." Depositions of W. W. Thacher. Received, opened, and filed May 4th, 1880. T. J. Galbreth, deputy clerk.

Extracts from Minutes of May 4, '80.

TUESDAY MORNING, *May* 4, '80.

Court met pursuant to adjournment.

FOURTH NAT'L BANK N. Y.
vs.
GEORGE FOSTER.

The court recused itself in this case & appointed J. M. Kenedy, Esq., attorney-at-law, judge *ad hoc* to try this case, & case continued.

Extracts from Minutes of Oct. 12*th*, 1881.

WEDNESDAY, *October* 12*th*, 1881.

Court met pursuant to adjournment.

Present: His honor E. J. Delony, judge; M. S. Powell, sheriff, & F. H. G. Taylor, deputy clerk.

88 4TH NAT'L BANK OF N. Y.
vs.
GEORGE FOSTER. } 20.

Petition of intervention of A. H. Foster filed.

Intervention of A. H. Foster.

8th District Court of La., East Carroll Pa.

FOURTH NAT'L BANK OF NEW YORK
vs.
GEORGE FOSTER. } No. 20.

In the above-styled suit now intervenes Alexander H. Foster, with leave of the court, being first had & obtained, & shows to the court that he is the real owner of the claim sued on herein, having obtained the same by purchase from the plaintiff for valuable consideration, as will be shown on the trial hereof.

Wherefore he prays that the plaintiff be cited to answer hereto by appointment of a curator *ad hoc* and that George Foster, the def't, be cited to answer hereto; that on trial hereof he be decreed to be the owner of the claim sued on herein, and that judgment be rendered in his favor for the amount of said claim, interests, & costs.

For general relief.

A. H. FOSTER.

89 *Pl'ff Ans. Intervention.*

8th Dist. Court, Parish East Carroll.

4TH NAT'L BANK OF NEW YORK
vs.
GEORGE FOSTER, A. H. FOSTER, Intervener.

Pl'ff answers the petition of intervention, & for answer denies each & every allegation in said petition contained & prays for his costs and general relief.

J. W. MONTGOMERY, *Att'y.*

Endorsed: Answer to intervention of A. H. Foster. Filed Oct. 17th, 1881. F. H. G. Taylor, d'y clerk.

Def't Answers the Intervention.

8th Dist. Court, Parish of East Carroll, Louisiana.

4 NAT'L BANK OF N. Y.
vs.
GEORGE FOSTER. } 20.

Now comes the defendant, George Foster, & for answer admits the allegations of the petition of intervention of Alex. H. Foster and concurs in the prayer of said petition that judgment be rendered in favor of the plaintiff in the intervention.

F. F. MONTGOMERY, *Att'y.*

Endorsed: Answer to intervention. Filed Oct. 17th, 1881. F. H. G. Taylor, d'y cl'k.

90 *Extracts from Minutes of Oct. 17th, 1881.*

MONDAY, *October 17th*, 1881.

Court met pursuant to adjournment.

Present: His honor E. J. Deloney, judge; A. B. Beldon, deputy sh'ff, & F. H. G. Taylor, d'y cl'k.

* * * * * * *

4TH NATIONAL BANK OF NEW YORK
vs.
GEORGE FOSTER, A. H. FOSTER, Intervener. } 20.

The case taken up for trial & tried. Judgment in favor of the intervener. See decree.

Judgment.

8th Dist. Court, Parish East Carroll, Louisiana.

FOURTH NAT'L BANK OF N. Y.
vs.
GEORGE FOSTER, ALEXANDER H. FOSTER, Intervener. } 20.

This case coming up for trial, & being tried upon the petition, answer, and proof in the case, and the petition of intervention of

Alexander H. Foster, & the answer thereto, and the evidence under the same, and the law and evidence being in favor of plaintiff & against defendant in the original case, and it further appearing from the evidence in the case that the intervener, Alexander H. Foster, is now the owner of the debt sued—

It is therefore ordered, adjudicated, & decreed that the plaintiff in intervention is the real owner of the debt sued on, and is
91 further ordered, adjudicated, & decreed that plaintiff in intervention, Alexander H. Foster, have judgment against defendant, George Foster, for the sum of twenty-two hundred dollars, with 5 % per annum interest from this date, and all costs of suit.

Read and signed in open court on this the 17th day of October, A. D. 1881.

J. M. KENNEDY,
Judge ad Hoc.

STATE OF LOUISIANA, }
Parish of East Carroll. }

Eighth District Court.

I, William Rous, clerk of the aforesaid court, in and for the parish & State above mentioned, duly commissioned and qualified, do hereby certify that the above & foregoing 37 pages of writing contains a true, correct, and complete transcript of all the documents filed, all the pleadings & proceedings had, in the case of Mary J. Gwyn *vs.* George Foster, No. 270 on the docket of the honl. court aforesaid, and a true and complete transcript of all the documents filed, pleadings & proceedings had, in the case of The 4th Nat. Bank of New York *vs.* George Foster, in which Alexander H. Fos-
92 ter appears as intervenor, & the judgment of the court in the above two cases, and minute entries, & that the deed on pages 20 & 21 is a perfect copy of the original on file and secured in my office.

Given under my hand & seal of office on this 7th day of
[SEAL.] November, A. D. 1885.

WM. ROUS, *Clerk.*

EXHIBIT "H."

FERD. M. GOODRICH }
vs.
NARCISSA J. MORGAN. }

U. S. Circuit Court, 5th Circuit, Western Dist. of La.

HEIRS OF J. C. PICKETT }
vs. } No. 110.
GEORGE FOSTER *et als.* }

EXHIBIT "H." Filed Nov. 30th, 1885. J. B. Beattie, D'y Cl'k.

93 Be it known and remembered that on the 25th day of January, A. D. 1867, F. M. Goodrich, tutor, filed in the office of the clerk of the district court of Carroll parish, Louisiana, his

petition praying for judgment in his favor and against the heirs of Jonathan Morgan; which petition is in the words and figures following, to wit:

Petition.

To the hon. the judge of the thirteenth judicial district court of Louisiana in and for the parish of Carroll:

The petition of Ferdinand M. Goodrich with respect represents that on or about the 20th day of April, 1859, he filed in your honl. court an account of his acts & doings as tutor for the minors Agnes A. & Narcissa J. Morgan, showing a balance in hand and in favor of said minors of twelve hundred & sixty-three $\frac{21}{100}$ ($1,263.21) dollars; that said account — kept and rendered against said minors jointly, and after due notice, legal delays, &c., the same was regularly homologated.

Your petitioner now submits herewith an account, marked "C," embracing his acts and doings from the said 20th April, 1859, up to the 15 March, 1862, with the then minor Narcissa J., now
94 Mrs. Narcissa J. Bell, having prior to said 15th March, 1862, become emancipated & taken possession of her property, both real & personal, rights & credits; which said account as submitted shows a balance due & owing to your petitioner for the sum of nine hundred & three $\frac{79}{100}$ dollars. Further would represent that he has severed their accounts because of the inequality of their expenses from the date of the rendition of said account, on the said 20th of April, 1859, arising from the fact that Mrs. Agnes A. Ricketts had left school while *while* Mrs. Narcissa J. Bell continued her studies.

Your petitioner desires further to represent the voucher annexed with the account of Mrs. Ricketts, marked "B," is also his voucher for the account herewith submitted, it being the account current of Pilcher & Goodrich, through whose hands every dollar received and expended passed, as his former accounts have shown.

The premises considered, your petitioner prays that the said Mrs. Narcissa J. Bell may be served with a copy, as well as the accounts marked "C" & "B," and, after due & legal notice & delays, that this said account be homologated & a judgment rendered in favor
95 of your petitioner of nine hundred & three $\frac{79}{100}$ dollars, with legal interest from 15th March, 1862, and that he be discharged from all further responsibility and liability as tutor aforesaid, his bond cancelled, & his securities relieved from all indebtedness & liability thereon, and as in duty bound will ever pray.

FERD. M. GOODRICH, *Tutor, &c.*

Confession.

I hereby waive service of the foregoing petition, copies of accounts & vouchers, citation, &c., and, having examined said before-mentioned accounts & vouchers & found them to be correct, do acknowledge my indebtedness to petitioner as set fourth, viz., nine hundred & three $\frac{79}{100}$ dollars, and do further acknowledge this to be a full,

complete, & final settlement for all liability of petitioner as tutor aforesaid, & concur fully in prayer of his petition.

Done this the 11th January, 1869.

MRS. N. J BELL.

Judgment.

By reason of the law and evidence and the foregoing written release & acquittance & acknowledgment of indebtedness, it is therefore ordered, adjudged, and decreed that the foregoing final account of Ferd. M. Goodrich, tutor of Narcissa J. Morgan (now Bell), be, and the same is hereby, approved & homologated, and said tutor
96 finally discharged and his bond cancelled; It is further ordered, adjudicated, and decreed that said Ferd. M. Goodrich have and recover of Narcissa J. Bell the sum of nine hundred and three $\frac{79}{100}$ dollars, with legal interest from 15th March, 1862, and acknowledged to be due by her, and the legal or tacit mortgage in favor of said tutor be recognized, to date from the 3rd Dec., 1855.

Done and signed at Floyd, parish of Carroll, Louisiana, this the 26th day of January, A. D. 1867.

J. L. CHEATHAM,
Clerk District Court.

The foregoing petition is endorsed in the following words and figures, to wit: Tutorship to the minor heirs of Jonathan Morgan. Final account of Ferd. M. Goodrich, tutor, with Mrs. N. J. Bell. Filed January 25th, 1869. J. L. Cheatham, clerk.

97 THE STATE OF LOUISIANA,
Parish of Carroll.

Thirteenth District Court.

FERD. M. GOODRICH, Tutor,
vs.
NARCISSA J. MORGAN (now GREEN). } No. —.

The State of Louisiana & said court to the sherif- of the parish of Carroll, Greeting:

We command you that by the seizure and sale of the property, real and personal, rights & credits of Narcissa J. Morgan (now Green) in the manner prescribed by law, you cause to be made the sum of nine hundred & three $\frac{79}{100}$ dollars, with 5% int. thereon from 15th March, 1862, also $1.10 clerk's costs & your own costs, to satisfy a judgment lately rendered in our said court against the said Narcissa J. Morgan (now Green) and in favor of the said Ferd. M. Goodrich, tutor, and of how you execute this writ you make return to our said court in seventy days, as the law directs.

Witness the Honorable E. D. Farrar, judge of said court, and the seal of said court, this the 21 day of June, A. D. 1868.

J. L. CHEATHAM, *Clerk*,
[SEAL.] By R. J. LOUDON,
Deputy Clerk.

I accept service of notice of seizure in this case.

J. W. MONTGOMERY,
Att'y for Def't.

98 Received, Floyd, Carroll parish, Louisiana, June 21, A. D. 1868, the within writs of *fieri facias*, and on the same day, month, and year seized all the rights, title, & interest of Narcissa J. Morgan in and to the following-described property, to wit, lots 41, 42, 43, 44, & 48, and the lower half of lot 49, *and* T. 19, R. 13 E., & lot No. one and the upper half of lot No. two, in T. 19, R. 14 E., in said parish of Carroll and State of Louisiana, containing altogether 1,150 acres, more or less; also lots 7 & 8, in T. 19, R. 14 E., in said parish and State, containing 330.19 acres; also the north ½ of section 56, in T. 19, range 13 east, in said parish and State, containing 318.40 acres; also an undivided ½ of a lot of one hundred & twenty acres, owned with Oliver J. Morgan in section 51, T. 19, R. 13 E., in said parish of Carroll, State of Louisiana, being sixty acres; also an undivided half (½) with H. Hood, of the W. ½ of section 62, in T. 21, R. 12 E., in said parish & State, containing 160.38 acres, together with all the interest in and to the buildings & improvements thereon or thereto belonging; notice of which seizure was waived by J. W. Montgomery, att'y for def't, on the same day, month, & year.

99 And on the first day of August, A. D. 1868, I advertised said property for sale in the "Carroll Record," a newspaper published weekly in said parish & State, to be sold on the 1st Saturday, the 5th day, of September, 1868, at the door of the court-house, in the town of Floyd, in said parish & State, for cash, with the benefit of apprais-ment; and on said day of sale, at the place aforesaid, at 11 o'clock a. m., after reading the advertisement & the recorder's certificate of mortgages, I offered said land for sale in an audible voice, at public auction, to the highest bidder; whereupon John H. Green became the purchaser for the price & sum of eleven hundred & fifty-six $\frac{64}{100}$ dollars, that being two-thirds of the appraised value of said lands and *and* that being the full amount of the debt and interest; whereupon said land was adjudicated to him. This writ is therefore returned satisfied in full.

GEORGE A. SHERIDAN, *Sheriff*,
By J. W. DRAUGHN, *D'y Sh'ff.*

Endorsed: Filed Sept. 5th, 1868. R. J. Loudon, d'y cl'k.

100 STATE OF LOUISIANA, }
Parish of East Carroll. }

8 Judicial District Court.

I, William Rous, clerk of the honl. court aforesaid in and for the above-mentioned parish & State, duly commissioned & qualified, *to* hereby certify that the foregoing six pages of writing contains a true, correct, & complete transcript of the petition waived and acknowledged by the defendant, judgment, writ of *fi. fa.*, & sheriff's return thereon in the case of F. M. Goodrich, tutor, *vs.* Narcissa J. Morgan,

on the docket of the late 13th district court of the late parish of Carroll, in this State.

[SEAL.] Given under my hand & seal of office on this the 11th day of November, A. D. 1885.

WM. ROUS, *Clerk.*

101 EXHIBIT "I."

FERD. M. GOODRICH, Tutor,
vs.
AGNES A. MORGAN.

EXHIBIT "I."

U. S. Circuit Court, 5th Circuit, Western Dist. La.

HEIRS J. C. PICKETT
vs.
GEORGE FOSTER *et als.* } No. 110.

Filed November 30th, 1885.

J. B. BEATTIE, *D'y Cl'k.*

102 EXHIBIT "I."

Be it known and remembered that on the 25th day of January, A. D. 1867, F. M. Goodrich, tutor, filed in the office of the clerk of the 13th district court of Carroll parish, Louisiana, his petition praying for judgment in his favor in the matter of the tutorship of the minor heirs of Jonathan Morgan, dec'd; which petition is in the words & figures following, to wit:

Petition.

To the honorable the judge of the thirteenth judicial district court of Louisiana in and for the parish of Carroll:

The petition of Ferdinand M. Goodrich with respect represents that on or about the 20th day of April, 1859, he filed in your honl. court an account of his acts and doings as tutor for the minors, Agnes A. & Narcissa J. Morgan, showing a balance in hand & in favor of said minors of twelve hundred & sixty-three $\frac{21}{100}$ ($1,263.21) dollars; that said account was kept & rendered against said minors jointly, and after due notice, legal delays, &c., the same was regularly homologated.

103 Your petitioner now submits herewith an account, marked A, embracing his acts & doings from the said 20th of April, 1859, up to the 15th of March, 1862, with the then minor Agnes A., now Mrs. Agnes A. Ricketts, having prior to the said 15th March, 1862, become emancipated and taken possession of her property rights & credits, real and personal, which said account as submitted shows a balance due & owing to your petitioner of thirty-four hundred & ninety-eight dollars $\frac{71}{100}$ $3,498.71. Petitioner further would represent that he has severed their accounts because of the inequality of their expenses from the date of the rendition of

said account on the 20th April, 1859, arising from the fact of Mrs. Agnes A. Ricket-s having left school while the other was continuing her studies.

Your petitioner desires further to represent that the voucher hereto annexed and marked "B" is the account current of Pilcher & Goodrich, through whos- hands every dollar received & expended passed, as his former accounts show. The premices considered, your petitioner prays that the said Agnes A. Morgan, now Mrs. Agnes A. Ricketts, may be served with a copy hereof, as well as the accounts marked "A" & "B," and, after due and legal notice & delays, that this said account be homologated and a
104 judgment rendered in favor of your petitioner, decreeing the balance due in favor of your petitioner of thirty-four hundred & nin-ty-eight $\frac{71}{100}$ dollars ($3,498.71), with interest from 15th March, 1862, and that he be discharged from all further responsibility & liability as tutor aforesaid, his bond cancelled, & his securities relieved from all indebtedness & liability thereon, &, as in duty bound, will ever pray.

FERD. M. GOODRICH, *Tutor, &c.*

Confession.

I hereby waive service of the foregoing petition, copies of accounts, vouchers, citations, &c., and, having examined the beforementioned accounts & *find* them to be correct, acknowledge my indebtedness to petitioner as set forth, viz: thirty-four hundred & nin-ty-eight $\frac{71}{100}$ dollars, and do further acknowledge this to be a full & complete & final settlement for all liability as tutor of petitioner, as aforesaid, & concur fully in prayer of his petition.

Done this 11th Jan'y, 1867.

A. M. RICKETTS.

Petition endorsed: Tutorship of the minor heirs of Jona. Morgan. Final account of Ferd. M. Goodrich, tutor, with Mrs. A. A. Ricketts. Filed January 25th, 1867. J. S. Cheatham, clerk.

105 *Judgment.*

Thirteenth District Court.

F. M. GOODRICH, Tutor,
vs.
AGNES A. RICKETTS.

STATE OF LOUISIANA,
Parish of Carroll.

By reason of the law & evidence & the written release acquittance & acknowledgement of indebtedness, all hereto annexed, it is therefore ordered, adjudicated, & decreed that the annexed final account & settlement of Ferd. M. Goodrich, tutor for Agnes A. Morgan (now Ricketts), be & the same is hereby approved & homologated, & said

tutor finally & fully discharged from said trust and his bond as tutor be canceled. It is further ordered, adjudged, & decreed that Ferd. M. Goodrich have and recover of the said Agness A. Ricketts the sum of thirty-four hundred & nin-ty $\frac{74}{100}$ dollars, with legal interest thereon from the 15th day of March, A. D. 1862, the amount acknowledged to be due by her, and that the legal or tacit mortgage in favor of said tutor be recognized to date from the 3rd day of December, 1855.

Done and signed at Floyd, Carroll parish, Louisiana, this the 25th day of January, A. D. 1867.

J. L. CHEATHAM,
Clerk District Court.

106 Thirteenth District Court.

FERD. M. GOODRICH, Tutor,
vs.
AGNES A. MORGAN (now RICKETS). } No. —.

THE STATE OF LOUISIANA,
Parish of Carroll.

The State of Louisiana and said court to the sheriff of the parish of Carroll, Greeting:

We command you that, by seizure & sale of the property, real & personal, rights, & credits of Agnes A. Morgan (now Ricketts) in the manner prescribed by law, you cause to be made the sum of thirty-four hundred & nin-ty $\frac{74}{100}$ dollars, with 5% interest thereon from the 15th day of March, A. D. 1862, also 1.10 clerk's costs & your own fees, to satisfy a judgment lately rendered in our said court against the said A. A. Morgan (now Ricketts) and in favor of said Ferd. M. Goodrich, tutor; and of how you shall have executed this writ you make return to our said court in seventy days, as the law directs.

[SEAL.] Witness the Honorable Edgar D. Farrar, judge of said court, & the seal of said court this the 21st day of June, A. D. 1868.

J. L. CHEATHAM, *Clerk,*
By R. J. LOUDON, *D'y Clerk.*

I waive — & accept notice of seizure in this case.
J. W. MONTGOMERY,
Att'y for Defendant.

107 Received, Floyd, Carroll parish, Louisiana, June the 21st, 1868, the within writ of *fieri facias*, and on the same day, month, and year seized the following-described property, to wit: All the right, title, interest, and claim of Mrs. Agnes A. Morgan (now Ricketts), as heir of Jonathan Morgan, Senior, and Jonathan Morgan, Junior, in and to the following-described lands, to wit: Lots 41, 42, 43, 44, & 48 & the lower $\frac{1}{2}$ of lot 49, T. 19, R. 13 E., & lot No.

1 & the upper half of lot No. 2, in T. 19, R. 14 E., in said parish & State, containing 1,150 acres; also lots 7 & 8, in T. 19, R. 14 E., in said parish & State, 330.19; also the N. ½ of L. 56, T. 19, R. 13 E., containing 318.40 acres; also an undivided ½ of a lot of 120 acres owned with Oliver J. Morgan, in sec. 51, T. 19, R. 13 E., in said parish & State, being 60 acres; also an undivided ½ with H. Hood of the W. ½ of section 62, T. 21, R. 12 E., in said parish & State, containing 160.38 acres, together with all her interests in & to the buildings & improvements thereon or thereto belonging, notice of which seizure was waived by J. W. Montgomery, att'y for defendant, on the same day, month, & year, and on the first day of August, A. D. 1868, I advertised said property for sale in the "Carroll Record," a newspaper published weekly in said parish & State, to be sold on the
1st Saturday, the 5th day, of September, 1868, at the door of
108 the court-house, in the town of Floyd, in said parish & State,
for cash, with the benefit of apprais-ment, and on said day of sale, at the place aforesaid, after reading the advertisement & the recorder's certificate of mortgages, I offered said property for sale in an audible voice, at public auction, at 11 o'clock a. m.; whereupon Ferd. M. Goodrich, plaintiff, became the purchaser for the price & sum — seventeen hundred & thirty-four dollars, that being the full amount of appraised value & being the last, highest, & only bid made therefor; whereupon said land was adjudicated to him, he retaining the amount of his bid less $37.73, costs, in part satisfaction of this writ. This writ is therefore returned as in part satisfied.

GEORGE A. SHERIDAN, *Sh'ff*,
By J. W. DRAUGHN, *D'y Sh'ff*.

Endorsed: Filed Sept. 5th, 1868. R. J. Loudon, d'y clerk.

109 STATE OF LOUISIANA, }
Parish of East Carroll. }

8 Judicial Dist. Court.

I, William Rous, clerk of the aforesaid court in & for the parish and State above mentioned, duly commissioned & qualified, do hereby certify that the foregoing six pages of writing contains a true, correct, & complete transcript of the petition waived & acknowledged by def't, judgment, & writ of *fi. fa.* and return thereon in the case of F. M. Goodrich, tutor, *vs.* Agnes A. Morgan, on the docket of the late 13th district court of the late parish of Carroll, in this State.

[SEAL.] Given under my hand & seal of office on this 17th day of November, A. D. 1885.

WM. ROUS, *Clerk*.

110 EXHIBIT "J."

Copy of Deeds, Jonathan Morgan Plantation.

EXHIBIT "J."

U. S. Circuit Court, 5th Circuit, Western Dist. of La.

HEIRS J. C. PICKETT
vs.
GEO. FOSTER *et als.* } No. 110.

Filed November 30th, 1885.

J. B. BEATTIE, *D'y Clerk.*

111 EXHIBIT "J."

STATE OF LOUISIANA,
Parish of Carroll.

Thirteenth District Court.

FERD. M. GOODRICH
vs.
NARCISSA J. MORGAN (now GREEN). } No. —.

Be it known that by virtue of a writ of *fieri facias* issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property, belonging to the defendant, Narcissa J. Morgan, to wit: Lots 41, 42, 43, 44, 48, and the lower ½ of lot 49, in T. 19, R. 13 E., & lot No. 1 & the upper ½ of lot No. 2, in T. 19, R. 14 E., containing altogether 1,150 acres, more or less; also lots 7 & 8 in T. 19, R. 14 E., $330\frac{19}{100}$ acres; also the N. ½ of sec. 56, in T. 19, R. 13 E., containing $318\frac{40}{100}$ acres; also an undivided ½ of a lot of 120 acres owned with Oliver J. Morgan, in sec. 51, T. 19, R. 13 E., being 60 acres; also undivided ½ with H. Hood of the W. ½ of sec. 62, in T. 21, R. 12 E., containing $160\frac{38}{100}$ acres, all situated in said parish & State, with all her interest in the buildings thereon or thereto belonging—I, George A. Sheridan, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned & sworn, did, on the 21st day of June, A. D. 1868, seize the above-described property, notice of which seizure was waived by J. W. Montgomery, for defendant, in writing, and on the 1st day of
112 August, A. D. 1868, I advertised said property for sale in the Carroll Record, a newspaper published weekly in said parish & State, to be sold at the door of the court-house, in the town of Floyd, in said parish & State, on the first Saturday, the 5th day, of September, A. D. 1868, and on said day of sale, at the place aforesaid, after reading the advertisement of sale & the recorder's certificate of mortgage, I offered the same for sale in an audible voice; whereupon John H. Green became the purchaser thereof for the

price & sum of seventeen hundred & thirty-four dollars, that being $\frac{2}{3}$ of the appraised value of said land.

Now, in consideration of the premises & by virtue of the authority in me vested by the laws of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, interest, & claim which the said Narcissa J. Morgan (now Green) has or had in and to said property; to have and to hold the same unto the said purchaser, his heirs & assigns, for his own proper use, benefit, & behoof forever.

In testimony whereof I hereunto sign my name officially, together with T. D. McCandless and A. G. Beldon, witnesses of lawful age, residing in said parish and State, this the 5th day of Sep-
113 tember, A. D. 1868.

GEO. A. SHERIDAN, *Sheriff*,
By J. W. DRAUGHAN, *D'y Sh'ff.*
JOHN H. GREEN.

Attest:
T. D. McCANDLESS.
A. G. BELDEN.

STATE OF LOUISIANA, }
Parish of Carroll. }

Thirteenth Dist. Court.

I certify the above & within deed is duly recorded in my office in Sheriff's Transfer Book "C," folio 280.

Given under my hand & seal of office this the 17th Oct., A. D. 1868.

J. L. CHEATHAM, *Clerk*,
By R. J. LOUDON, *D'y Clerk.*

STATE OF LOUISIANA, }
Parish of East Carroll. }

I, William Rous, clerk of the 8th district court & *ex officio* recorder in and for said parish, do hereby certify that the foregoing is a true copy of the original deed now file in this office, & that the same is duly recorded, under date of October 19th, A. D. 1868, in Notarial Record "N," folios 122 & 123.

Witness my hand and seal of office this the 11th day of November, A. D. 1885.

WM. ROUS,
Clerk & ex Officio Recorder.

114 STATE OF LOUISIANA, }
Parish of Carroll. }

13th District Court.

FERD. M. GOODRICH
vs.
AGNES A. MORGAN (now RICKETTS) } No. —.

Be it known that by virtue of a writ of *fieri facias* issued from said court in the above-styled case & to me directed, commanding me to

seize and sell the following-described property, belonging to the defendant, Agnes A. Morgan, to wit: Lots 41, 42, 43, 44, 48, and the lower ½ of lot 49, T. 19, R. 13 E., & lot No. 1 & the upper half of lot No. 2, in T. 19, R. 14 E., containing 1,150 acres; also lots 7 & 8, in T. 19, R. 14 E., containing 330.19 acres; also the N. ½ of sec. 56 in T. 19, R. 13 E., containing 318.40 acres; also an undivided ½ of a lot of 120 acres owned with Oliver J. Morgan, in sec. 51, T. 19, R. 13 E., in said parish & State, being 60 acres; also an undivided ½ with H. Hood of the W. ½ of sec. 62, T. 21, R. 12 E., containing 160.38 acres, together with all her interest in the building & improvements thereon or thereto belonging—I, Geo. A. Sheridan, sheriff in & for the parish of Carroll, State of Louisiana, duly commissioned & sworn, did, on the 21st day of June, A. D. 1868, seize the above-described property, notice of which seizure was waived by J. W. Montgomery, attorney for defendant, in writing, & on the 1st day of August, A. D. 1868, I advertised said property for sale in the "Carroll Record," a newspaper published weekly in said parish & State, to be sold at the
115 door of the court-house, in the town of Floyd, in said parish & State, on the first Saturday, the 5th day, of September, A. D. 1868, & on said day of sale, at the place aforesaid, after reading the advertisement of sale & the recorder's certificate of mortgage, I offered the same for sale in an audible voice; whereupon Ferd. M. Goodrich, plaintiff, became the purchaser thereof for the price and sum of seventeen hundred & thirty-four dollars, that being the full amount of the appraised value of said property.

Now, in consideration of the premises and by virtue of the authority in me vested by the laws of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, interest, & claim which the said Agnes A. Morgan (now Ricketts) has or had in & to said property; to have & to hold the same unto the said purchaser, his heirs & assigns, for his own proper use, benefit, & behoof forever.

In testimony whereof I hereunto sign my name officially, together with T. D. McCandless & A. G. Belden, witnesses of lawful age, residing in said parish & State, this the 5th day of September, A. D. 1868.

GEO. A. SHERIDAN, *Sheriff*,
By J. W. DRAUGHAN, *D'y Sh'ff.*
FERD. M. GOODRICH.

Attest:
T. D. McCANDLESS.
A. G. BELDEN.

STATE OF LOUISIANA, }
Parish of Carroll. }

Thirteenth District Court.

116 I hereby certify the within deed is duly recorded in my office in Sheriff's Transfer Book "C," folio 279.

Given under my hand & seal of office this the 17th Oct., 1868.

J. L. CHEATHAM, *Clerk*,
By R. J. LOUDON, *D'y Cl'k.*

STATE OF LOUISIANA, }
Parish of East Carroll. }

I, Wm. Rous, clerk of the 8th district court & *ex officio* recorder in & for said parish, do hereby certify that the foregoing is a true copy of the original deed now on file in this office, & that the same is duly recorded, under date of October 19th, A. D. 1868, in Notarial Book "N," folio 123.

[SEAL.] Witness my hand & seal of office this 11th day of November, A. D. 1885.

WM. ROUS,
Clerk & ex Officio Recorder.

117 STATE OF LOUISIANA, }
Parish of Carroll. }

Before me, Thomas B. Rhodes, a notary public in and for the parish of Carroll, in the State of Louisiana, duly commissioned & sworn, personally came & appeared Ferdinand M. Goodrich, a resident of said parish & State, who declared & said unto me, notary, that, for the consideration hereinafter to be mentioned, he has this day bargained, sold, & delivered, & by these presents doth bargain, sell, set over, & deliver, unto Mrs. Agnes A. Ricketts (widow), here present & accepting this act, with its claims, stipulations, & conditions, all his right, title, & interest in & to the following named & described property, to wit: Lots forty-one (41), fifty-three (53), forty-three (43), forty-four (44), forty-eight (48), & the lower half of lot forty-six (46), in township No. nineteen (19), range thirteen (13) east, & the upper half of lot No. 2, township nineteen (19), range fourteen (14) east; also lots Nos. seven (7) & eight (8), T. 19, range 14 east; the N. ½ of section No. 56, T. 19, R. 13 east; also an undivided half of a lot of (120) one hundred & twenty acres, in section No. (51) fifty-one, T. 19, range 13 east, & an undivided half of the west half of section (62) sixty-two, in township No. 21, range 12 east.

The said Ferdinand M. Goodrich hereby conveys & warrents such title to said property above & before mentioned & described
118 herein sold & conveyed as he acquired at sheriff's sale on the 5th day of September, A. D. 1868, & he is hereby exonorated from all & any warranty, and even from the return of the price of the property conveyed.

The price & consideration for which the above sale is made is the sum of four thousand dollars, payable in four equal installments of one thousand dollars each, for which the said Mrs. Agnes A. Ricketts has this day executed her four notes, payable to Ferd. M. Goodrich or order, respectively, on the 20th day of November, 1869, 1870, 1871, 1872, with eight per cent. interest per annum from date of their execution, at the Citizens' Bank in New Orleans, which notes I have this day paraphed "*ne varietur*," in order to identify them more fully with this act. Now, therefore, in order to secure the full & punctual payment of said notes, together with the interest accruing thereon, or any costs which may be incurred in the collection of

the same, be it in attorneys' fees, which are fixed at five per cent., or otherwise, the said Agnes A. Ricketts declared that she special-y mortgages or hypothecates in favor of the vendor or any *bona fide* holder or owner of said notes the property herein conveyed, with any improvements which may be put thereon, & promice- not
119 to alienate or encumber said property to the prejudice of this mortgage.

The parties to this act agree to dispense with the production of the certificate of mortgage required by article 3328 of the civil code of the State, and ex*h*onerate the notary from any liability in the premises.

It is understood that all taxes for which said property is assessed or may be assessed are to be paid by the vendor and the vendor hereby relieved from the same.

The interest acquired in said property & here conveyed by this act is eleven-thirty-seconds ($\frac{11}{32}$).

This done and signed in Tompkins Bend, in the parish of Carroll, on this the 18th day of December, A D. one thousand eight hundred & sixty-eight, in the presence of Jacob C. Purdy & Robert M. Scanlan, witnesses of lawful age, who, together with the parties and me, notary, have signed this act.

FRED. M. GOODRICH.
AGNESS A. RICKETTS.

Attest:
J. C. PURDY.
R. M. SCANLAN.

THOMAS B. RHODES,
Notary Public.

STATE OF LOUISIANA, }
Parish of East Carroll. }

I, Wm. Rous, clerk of the 18th district court and *ex officio* recorder in and for said parish, do hereby certify that the foregoing is a true copy of the original deed now on file in this office,
120 and that the same is duly recorded under date of December 19th, 1868, in Notarial Book "N," folios 201 & 202.

[SEAL.] Given under my hand & seal of office this 11th day of of November, A. D. 1885.

WM. ROUS,
Clerk and ex Officio Recorder.

STATE OF LOUISIANA, }
Parish of Carroll. }

Thirteenth District Court.

N. O. CANAL BANK CO. }
vs. } No. 5236.
OLIVER T. MORGAN. }

MRS. ROSA CAMMACK }
vs. } No. 5236.
OLIVER T. MORGAN. }

Be it known that by virtue of two writs of *fieri facias* issued from said court in the above-styled case and to me directed, commanding me to seize and sell the following-described property, belonging to the defendant, Oliver T. Morgan, to wit:

The undivided five-sixteenths in and to the following-described lands, situated in the parish of Carroll, State of Louisiana, known as the plantation of the estate of Jonathan Morgan, composed of lots 41, 42, 43, 44, 48, & the lower half of lot 49, in township 19 of range 13 east, & lot 1 and the upper half of lot 2, in township 19 of range 14 east; also lots 7 & 8, in township 19, R. 14 east;
121 north half of section No. 56, T. 19, R. 13 east; also the undivided half of one hundred & twenty acres owned with the estate of O. T. Morgan, in section 51, T. 19, range 13 east, containing in all seventeen hundred & fifty-eight $\frac{55}{100}$ acres—

I, George A. Sheridan, sheriff in and for the parish of Carroll, State of Louisiana, duly commissioned & sworn, did, on the 18th day of November, A. D. 1869, seize the above-described property, notice of which seizure was waived by O. T. Morgan, defendant, in writing, and on the 18th day of November, A. D. 1869, I advertised said property, by posting the same in three public places in said parish & State, to be sold at the door of the court-house in the town of Floyd, in said parish & State, on Saturday, the 19th day of December, A. D. 1869, in accordance with waiver filed in above suits, for cash, with the benefit of appraisement, and on said day of sale, at the place aforesaid, after reading the advertisement of sale & the recorder's certificate of mortgage, I offered the same for sale in an audible voice; whereupon Ferdinand M. Goodrich became the purchaser thereof for the price and sum of nine hundred & fifteen $\frac{1}{100}$ dollars, which amount I paid over to the said parties concurrently,
as shown by the return on the writs of *fi. fa.* filed in suits 5235
122 & 5236, on file in the office of the clerk of the 13th district court, that being $\frac{2}{3}$ of the appraised value of said land.

Now, in consideration of the premises & by the law of the State of Louisiana, I do hereby sell and adjudicate unto the said purchaser all the right, title, interest, & claim which the said Oliver T. Morgan has or had in & to said property; to have and to hold the same unto the said purchaser, his heirs & assigns, for his own proper use, benefit, & behoof forever. In testimony whereof I hereunto sign my name officially, together with —— —— and —— ——, witnesses of lawful

age, residing in said parish and State, this the nineteenth day of December, A. D. 1869.

Attest:

GEO. A. SHERIDAN, *Sh'ff*,
By J. W. DRAUGHAN, *D'y*.
FERD. M. GOODRICH.

STATE OF LOUISIANA, }
Parish of Carroll. }

Thirteenth District Court.

I hereby certify the within deed is duly recorded in my office in Sheriff's Transfer Book "D," folios 19 & 20.

Given under my hand & seal of said court this the 16th day of February, A. D. 1870.

R. J. LOUDON, *D'y Clk.*

123 STATE OF LOUISIANA, }
Parish of East Carroll. }

I, Wm. Rous, clerk of the 8th district court & *ex officio* recorder in & for said parish, do hereby certify that the foregoing is a true copy of the original deed now on file in this office, and that the same is duly recorded, under date of February 25th, 1870, in Notarial Record "N," folios 354 & 355.

Witness my hand & seal of office this 11th day of No-
[SEAL.] vember, A. D. 1885.

WM. ROUS,
Clerk & ex Officio Recorder.

STATE OF LOUISIANA, }
Parish of Carroll. }

Be it known that before me, Dolaldson C. Jenkins, a notary public in and for the parish of Carroll, State aforesaid, on this the 23rd day of May, 1870, personally came and appeared Ferdinand M. Goodrich, an inhabitant of the parish aforesaid, who declared & said that, for the consideration and price of five thousand dollars to him cash in hand paid by John H. Green and full acquit-ance granted therefor, he does by these presents grant, bargain, sell, convey, set over, with all legal warrantees arising from his own
124 acts & deeds, but against none others, unto the said John H. Green, also of the said parish of Carroll, all & singular an undivided one-sixth part, share, & interest of, in, & to the following-described tracts or parcels of land, together with the buildings & improvements thereon and appertenances thereto belonging, situate, lying, and being situate in said parish of Carroll, viz: The north half of section number fifty-six & the south half of lot No. five, in section No. fifty-one of township No. nineteen north of range No. thirteen east, in the district of lands north of Red river in this State; also lots Nos. forty-one, forty-two, forty-three, forty-four, and all of section No. forty-eight, except a part sold off by the heirs of Jona. Morgan to James Railey, in said township & range; and also

lot No. one, the upper half of lot No. two, & also lots Nos. seven & eight of township No. nineteen north, range No. 14 east, of said district of lands north of Red river, in this State; also an undivided half of one hundred and twenty acres in section No. 51, in township No. 19, range 13 east, containing sixteen hundred & thirty-seven $\frac{78}{100}$ acres in all, which said one-sixth part is the one-half of the purchase acquired by this vendor as the last & highest bidder thereon at a public sale thereof made by the sheriff of the
125 parish of Carroll on the — day of ——, 1868, under and by virtue of writs of *fieri facias* to the said sheriff directed by the hon. the judge of the thirteenth judicial district court at the suit of the New Orleans Canal & Banking Co. & Mrs. Rosa Cammack *vs.* Oliver T. Morgan:

To have and to hold the said one-sixth undivided part of said described land unto the said John H. Green, his heirs and assigns forever.

And therefore the said purchaser declared that he dispenses with the production of a certificate of mortgages, as required by article 3328 of the Civil Code of this State, and holds me, notary, harmless for its non-production.

It is also agreed that this vendor shall not under any circumstances be held as warrantor beyond his own acts, and, further, in case of eviction he shall not be made to refund the amount this day received by him.

This done and signed in the parish of Carroll, in presence of J. W. Montgomery and Robert M. Scanlan, lawful witnesses, who sign with said parties and me, notary, the day, month, & year above written.

FERD. M. GOODRICH.
J. H. GREEN.

Attest:
J. W. MONTGOMERY.
R. M. SCANLAN.

D. C. JENKINS,
Notary Public.

126 STATE OF LOUISIANA, }
Parish of East Carroll. }

I, Wm. Rous, clerk of 8th district court and *ex officio* recorder in and for said parish, do hereby certify that the foregoing is a true copy of the original deed now on file in this office, and that the same is duly recorded, under date of May 26th, 1870, in Notarial Book "N," folio 395.

Witness my hand and seal of office this 11th day of No-
[SEAL.] vember, A. D. 1885.

WM. ROUS,
Clerk & ex Officio Recorder.

127 STATE OF LOUISIANA, }
Parish of Carroll. }

Be it known that on this the fifth day of the month of February, in the year of our Lord one thousand eight hundred and seventy-three, & of the Independence of the United States the ninety-seventh,

before me, Thos. B. Rhodes, a notary public in and for the parish of Carroll, State of Louisiana, duly commissioned & qualified, and in the presence of the witnesses hereinafter named, personally came and appeared Mrs. Agnes Almira Morgan, the wife, of lawful age, of Robert M. Scanlan, of this parish, & herein duly authorized and assisted by her said husband: now whereas it has been agreed between the said Mrs. Scanlan, with the consent of her said husband and the firm of Foster & Gwyn, that the — George Foster would acquire and make the debt & mortgage his own, which the said firm hold and have been endeavoring to collect against her, the said Mrs. Agnes A. Scanlan, the wife of said Robert M. Scanlan, and separate in property from him, and would also acquire the judgments & mortgages they hold against the said Robert M. Scanlan, and would release the mortgages against her personal-y, and transfer the judgments & mortgages against her said husband, to be held by
128 her for her own use & benefit; that these she would bargain, sell, give in payment, transfer, and convey by way of compromise of her debts to said George Foster the plantation & property hereinafter described in satisfaction of said mortgage debt and for the acquisition of said judgment & mortgages against her said husband and whereas the said George Foster has acquired said judgments and mortgages in conformity with said agreement & understanding & is ready to perform his part of said agreement; and whereas the said Mrs. Scanlon & George Foster have thus compromised the said demand which he has against the said Mrs .Scanlan, which this act carries into effect: Now, therefore, the said Mrs. Agnes A. M. Scanlan, wife as aforesaid, with the authorisation of her said husband, declared that for the considerations and on the terms & condition- hereafter expressed, she does by these presents grant, bargain, sell, convey, exchange, give in payment, assign, transfer, & set over, with all legal warrantee unto George Foster, of the city of New Orleans, in this State, here present, accepting, and purchasing for himself, his heirs and assigns, and acknowledging delivery & possession thereof, all & singular the following-described tracts or parcels of land, situated, lying, and being in this parish, together with the buildings & improvements
129 thereon, mules, horses, carts, wagons, aratory implements and all other articles of personal property thereon & thereto attached, and all rights, ways, privileges, and appurtenances thereto belonging or in anywise appurtaining, including any and all rights of batture and alluvia or accretions of batture attached to either of said tracts of land, viz:

First. All that tract or parcel of land fronting on the Mississippi river, bounded above by lands now or formerly belonging to John H. Green, below by lands now or formerly belonging to the estate of George R. Newman, & in the rear by lands now or formerly belonging to the Henderson estate, containing, more or less, four hundred & seventy-two $\frac{41}{100}$ acres, & comprised of the following parcels or portions of land, viz: Lot No. one & the west or upper half of lot No. 2, in township No. nineteen south, range No. fourteen east, & lot No. forty-four, & all that portion of lots Nos. forty-three &

forty-eight, in township No. nineteen south, range No. thirteen east, which lies on the east or lower side of a line running through said lots Nos. forty-three & forty-eight, the whole being more fully shown in a sketch or plat of survey annexed to an act of partition between the present vendor & John H. Green, passed on the 23rd day of May, eighteen hundred & seventy, before Donaldson
130 C. Jenkins, of this parish, a notary public.

Second. Another tract or parcel of land fronting on the Mississippi river, bounded above by the lands now or formerly belonging to the estate of George R. Newman, below by the lands now or formerly belonging to John H. Green, and in the rear by the lands herein firstly described, containing one hundred & fifty-seven $\frac{1.5}{1.0.0}$ acres, more or less, and being the north or upper part of lot No. seven, in township No. nineteen south, range No. fourteen east, as shown by a line running through said lot No. seven, in the above-mentioned sketch.

And third. Another tract of land containing one hundred & thirty-five $\frac{2.5}{1.0.0}$ acres, more or less, being the east portion of the north half of section No. fifty-six, & sixty acres of No. fifty-one, both in township No. nineteen south, range No. thirteen east, and more particularly defined in the above-mentioned plat or survey made by Rob't Boyd, and bounded on the east by the lands now or formerly belonging to Rob't M. Scanlan & Isham Beard, and on the south by the lands now or formerly belonging to the Raleigh estate, and on the west by the lands now or formerly belonging to John H. Green, and on the north by the lands belonging to the Galoway estate.

131 To have and to hold the said property and appurtenances unto the said purchaser, his heirs & assigns forever; and the said vendor hereby binds herself and her heirs forever to warrant & defend the property and appurtenances herein conveyed against all legal claims & demands whatsoever. Said vendor moreover transfers unto said purchaser all the rights and actions of warranty to which she herself is entitled against all former proprietors of the property herein conveyed, subrogating the said purchaser to the same rights and actions and interests to be by him enjoyed & exercised in the same manner as they might have been by said vendor.

This sale is made and accepted for and in consideration of the total sum of thirty-six thousand nine hundred and four $\frac{9.4}{1.0.0}$ dollars, which has been settled, liquidated, and compromised in the manner following, viz:

Whereas the present purchaser is the *bona fide* owner and possessor of a certain promissory note for the sum of nineteen thousand dollars drawn by the present vendor to the order of and endorsed by herself and countersigned by her said husband, dated at Lake Providence, in this parish, on the twenty-third day of May, eighteen hundred and seventy, and made payable at the office of Foster
132 & Gwyn, in New Orleans, Louisiana, at one year after date, with interest, at the rate of eight per cent. per annum, from date until paid, and on which all interest has been paid up to the

twenty-third day of May, eighteen hundred and seventy-one, said note being the same payment whereof is secured by the mortgage which the present vendor granted in favor of Mess. Foster & Gwyn by an act passed before Donaldson C. Jenkins, a notary public in this parish, on the 23rd May, 1870, on the real estate, &c., herein described and herein conveyed, and it amounts, in principle and interest to the date hereof, to the sum of twenty-one thousand seven hundred ($21,700) dollars:

Now, therefore, in part settlement of the aforesaid purchase price the said purchaser has, at the execution hereof and in the presence of the undersigned notary and witnesses, transferred and delivered the said promissory note unto the said Mrs. Agnes M. Scanlan, who hereby acknowledges its receipt; and being therewith satisfied and contented grants the present purchaser an acquittance and discharge to the extent and amount of said note in principal and interest, viz., twenty-one thousand seven hundred dollars, on account of the aforesaid purchase price.

And the remainder of said purchase price has been settled and liquidated as follows:

133 Whereas the present purchaser is the *bona fide* owner and possessor of, 1st, a certain promissory note for the sum of seven thousand ($7,000) dollars, drawn by Robert M. Scanlan to the order of an- endorsed by himself, dated at Lake Providence, in this parish, on the twenty-third day of May, eighteen hundred and seventy, and made payable at the office of Foster & Gwyn, in New Orleans, Louisiana, at one year after date, with interest, at the rate of eight per cent. per annum, from date until paid, whereon all interest has been paid up to the twenty-third day of May, eighteen hundred and seventy-one, said note being the same payment of which is secured by the mortgage which the said Scanlan granted in favor of Foster & Gwyn by an act passed before said notary public, Donaldson C. Jenkins, on May 23rd, 1870, on the following-described property, viz: All that tract of land situated in this parish, with buildings, &c., rights and privileges thereto belonging, containing about three hundred & fifty acres, more or less, and bounded on the north by the Mississippi river, on the east by Raleigh plantation, on the south by the lands of Isham Beard, and on the west by the lands of Agnes M. Scanlan and the estate of James Galloway, being

134 known and designated as the Salem plantation; second, another certain promissory note for the sum of four thousand nine hundred and ninety-three $\frac{53}{100}$ dollars, drawn by said Rob't M. Scanlan to the order and endorsed by himself, dated at Carroll parish, Louisiana, the first of March, eighteen hundred & seventy-two, and made payable at the Louisiana National bank, in New Orleans, Louisiana, at nine months after date, with interest, at the rate of eight per cent. per annum, from date until final payment, said note being the same payment whereof is secured by the mortgage which said Scanlan granted in favor of said Foster & Gwyn on the aforedescribed Salem plantation, together with the buildings, farming utensils, stock, mules, and movable property thereon & thereto attached by an act passed before Thomas B. Rhodes, a notary public

in this parish, on the eleventh day of March, eighteen hundred & seventy-two; and, third, two several judgments rendered by the district court of this State for this parish in favor of Ferdinand Bernd and against said Robert M. Scanlan, one thereof in suit No. 5887 of the docket of said court, under date of June 2nd, 1871, for the sum of eleven hundred & fifty-nine $\frac{45}{100}$ dollars, and the other
135 thereof in suit No. 5899 of the docket of said court, under date of June 2nd, 1871, for the sum of five hundred and seven $\frac{87}{100}$ dollars—

Said note of seven thousand dollars amounting in principal and interest to the date hereof to the sum of seventy-nine hundred and thirty-three $\frac{33}{100}$ dollars ($7,933.33); that of four thousand nine hundred & seventy-three $\frac{53}{100}$ dollars amounting in principal and interest to the date hereof to the sum of fifty-three hundred and fifty-one $\frac{96}{100}$ dollars ($5,351.96) and the aforesaid judgments amounting in principal and interest to the sum of nineteen hundred & nineteen $\frac{65}{100}$ dollars, making together the sum of fifteen thousand two hundred & four $\frac{94}{100}$ dollars, being the aforesaid remainder of said purchase price:

Now, therefore, in full settlement of the remainder of said purchase price, the said purchaser hereby transfers, assigns, delivers, and sets over, but without any warranty whatever *whatever*, unto the said Mrs. Agnes A. M. Scanlan, the above-described promissory notes of Robert M. Scanlan for the respective sums of seven thousand dollars & forty-nine hundred and ninety-three $\frac{53}{100}$ dol-
136 lars, as well as the aforesaid several judgments against said Scanlan in said suits Nos. 5887 & 5899 of the docket of the district court of this State for this parish; and in order to enable the said Agnes A. M. Scanlan to obtain and receive the amounts of said two promissory notes as well as the said two *two* judgments, as well as any and all costs, charges, lawyer's fees, and other expenses whatsoever that are or may become due thereon under and by virtue of the considerations, stipulations, privileges, mortgage, and other provisions contained in either of said acts of mortgage or accuring under the aforesaid judgments, said George Foster moreover declared that he transfers, assigns, sets over, but without any warranty whatever, unto the said Mrs. Agnes A. M. Scanlan, who accepts the same, all and singular the rights, privileges, interests, claims, and demands which he or the said firm of Foster & Gwyn has or may have in and to said promissory notes and judgments, and especially in and to the mortgages, liens, & privileges securing their payment by virtue of either of the aforesaid acts of mortgage or said judgments, with full power and authority to enforce and exercise
137 the same that said George Foster might or could do if this assignment or subrogation had never been made; and said Agnes A. M. Scanlan hereby acknowledges delivery & possession of said notes & judgments, and in consideration thereof grants the said purchaser a full acquit-ance & discharge for the whole of said purchase price.

And the said parties here declared that they dispense with the production of a certificate of mortgage from the record of mortgages

of this parish to show that mortgages, if any, exist against the herein-described lands, as is otherwise required by law. Said purchaser assumes and binds himself to pay any and all taxes that may be levied against said property for the year last past and that for other years prior thereto have been paid, as per receipts therefor produced unto me, notary.

Thus done and passed before me, in said parish of Carroll, in presence of H. O. Clark & John Martin, lawful witnesses, who signed hereto with said parties and me, notary, this the day, month, and year above written.

A. M. SCANLAN.
R. M. SCANLAN.
GEORGE FOSTER.

Attest:
H. O. CLARK.
JOHN MARTIN.

T. B. RHODES,
Notary Public.

138 STATE OF LOUISIANA, }
Parish of East Carroll. }

I, Wm. Rous, clerk of the 8th district court & *ex officio* recorder in and for said parish, do hereby certify that the foregoing is a true copy of the original deed now on file in this office, and that the same is duly recorded, under date of March 8th, 1873, in Notarial Book "O," folios 408, 409, 410, & 411.

Witness my hand and seal of office this 11th day of No-
[SEAL.] vember, A. D. 1885.

WM. ROUS,
Clerk & ex Officio Recorder.

139 *Sale of Land.*

United States Marshall }
to
Ezra Wheeler & Co. }

Whereas I, S. B. Packard, marshall of the United States for the district of Louisiana, under & by virtue of a writ of seizure and sale issued and to me directed by the honorable the circuit court of the United States for the fifth judicial circuit and district of Louisiana, at the suit entitled "Ezra Wheeler & Co. *vs.* John H. Green, No. 6972 of the docket of said court, after having fulfilled and complied with all the provisions requisite, *I* did seize and take into my possession the following-described property, to wit: All those certain tracts or parcels of land, together with the buildings & improvements thereon, farming utensils or aratory implements of all kinds, machinery, engine, stock, mules, and movable property thereon or thereunto attached by destination, situate, lying, and being in the parish of Carroll, in this State, and comprising the following tracts, viz:

All of lots No. forty-one & forty-two; all that portion of lots No. 43 & 48 which is on the west or upper side of a line running through said lots Nos. 43 & 48 and contains $472\frac{41}{100}$ acres, as per a survey & sketch of a survey made by Robert Boyd, surveyor, 140 in January, 1870; all of section No. 8 and that part of section No. 7, in township No. 19, range 14 east, as lies on the south side of a line running through said lot No. 7, so as to embrace $157\frac{15}{100}$ acres and $243\frac{41}{100}$ acre- of the north half of section No. 56; all of which lands are fully delineated in the aforesaid sketch of survey made by Surveyor Boyd and fully described in an act of partition of same and other lands, passed before D. C. Jenkins, a notary public in said parish of Carroll, on the 23 day of May, 1870, and after having given due and legal notice to the said defendant of the said seizure in the manner pointed out by law and having placed a keeper on said property and having taken the said property into my possession I advertised the said before-described property for sale after the expiration of the legal delay from the time of said notice, to wit, on Saturday, the 21st day of June, 1873, by advertisement, composed in English, announcing the sale to take place at the court-house, in the town of Lake Providence, parish of Carroll, on the 2nd day of August, 1873, at 12 o'clock m. Said advertisement was inserted and published in English in the "Lake Republican," the official paper 141 of the parish of Carroll, published at the town of Lake Providence, from the said 21st day of June, 1873, to the day of sale in each and every issue of said official paper during said time, being full thirty days from the date of the first notice given in said newspaper. Said advertisements were inserted & published in said official journal on June 21st, 1873; June 28th, July 5th, 12th, 19th, 26, and August 2nd, 1873; and after having further complied with and performed all the additional previous legal requisites, and after the said *said* property having been duly appraised according to law, under a plan and survey thereof submitted to me, which plan is on file in this office, I did expose the said property for public sale, according to law, at the said court-house in the parish of Carroll, on the said Saturday, August 2nd, 1873, at 12 o'clock m., and at the same time & place of sale I did announce in a loud and audible voice the terms and conditions of sale hereinafter expressed and specified, and did read verbatim in a loud and audible voice the certificate of the recorder of mortgages of the parish of Carroll, delivered on the day of sale, by which certificate it appears that 142 there are no other mortgages standing in the name of said defendant and recorded against the said before-described property than the following, to wit:

Mortgage in favor of Foster & Gwyn for the sum of $10,000, 8% interest from the 23rd day of May, 1870, recorded in Book "I," folio 239; *lein* and privilege on all stock & personal property on Bell plantation in favor of Foster & Gwyn for advances for the year 1870, recorded Mortgage "I," folio 480; mortgage in favor of Foster & Gwyn for the sum of $3,723.61, interest at the rate of 8% until

paid, given July 14th, 1871, recorded July 17th, 1871; mortgage in favor of Foster & Gwyn for the sum of $3,009.55, with interest at the rate of 8% from March 7th, 1872, until paid, recorded March 12th, 1872.

Given under my hand and seal of office this 2nd day of August, 1873.

M. A. SWEET, *Recorder.*

When Ezra Wheeler & Co., composed of Ezra Wheeler, Thomas Rounday, Augustus Ireland, and John V. Wheeler, being the last and highest bidders, each and every lot or portion of said property as hereinabove described in the plan hereinbefore annexed was adjudicated to the said Ezra Wheeler & Co., composed of Ezra
143 Wheeler, Thomas Roundy, Augustus Ireland, & John W. Wheeler for the price of each and every lot as follows, to wit: No. 1 lot, C. L., $534.00; lot No. 2, C. L., $667.00; lot No. 3, $1,567.00; lot No. 4, $667.00; lot No. 5, $667.00; lot No. 6, $667.00; lot No. 7, $667.00; lot No. 8, $667.00; lot No. 9, $667.00; lot No. 10, 667.00; lot No. 11, $534.00; lot No. 12, $534.00; lot No. 13, $435.00; lot No. 1, W. L., $262.00; lot No. 2, $262.00; lot No. 3, $262; lot No. 4, $262; lot No. 1, S. L., $75.00; lot No. 2, $67.00; lot No. 3, $67.00; lot No. 4, $67.00; lot No. 5, $67.00; lot No. 6, $67.00, making a total of ten thousand three hundred & ninety-eight dollars ($10,398), being over two-thirds the total apprais-ment, which amounted to $15,429.00; terms cash on the day of sale; which price the said purchasers, Ezra Wheeler & Co., settled with me as follows, to wit: Paid in cash marshal's costs & expenses, $445.25; paid clerk U. S. circuit court, $22.35; paid surveyor for surveying and plan, $50.00; paid taxes, $425.00; paid mortgage officer, $1.50, making a total of nine hundred & thirty-nine $\frac{10}{100}$ dollars ($939.10), and the balance of the price of adjudication, to wit, $9,458.90, the purchasers retain in their hands to be applied to the payment of their mortgage. Five per cent. attorney's fees, as fixed by the act of mortgage, amount-
144 ing to $930.15, was likewise retained by the purchasers as a part of their mortgage claim.

Total of purchasers' mortgage and vendor's claim as by writ and claim, $19,533.45; balance of bid retained in part payment, $9,458.90; balance due purchasers after deducting amount retained, $10,074.55.

Now, therefore, know all men by these presents that I, the said marshal*l*, in consideration of the premises and by virtue of the laws in such cases made and provided, do hereby sell, transfer, assign, and set over the aforesaid property to the said Ezera Wheeler & Co. and all the rights and title which said defendant had in or to the said before-described property; to have and to hold the same to the*ir*, the said Ezra Wheeler & Co., and their heirs and assigns forever.

In witness whereof I have hereunto signed my name, at New Orleans, in the State of Louisiana, this the 2nd day of August, in the year of our Lord one thousand eight hundred & seventy-three,

& the 98 year of the Independence of the United States of America.

S. B. PACKARD,
U. S. Marshall,
By T. W. DE KLYNE, *Deputy.*

Signed in the presence of the following competent witnesses:
JOHN FAHEY.
J. B. STOCKTON.

145 United States Circuit Court for the Fifth Judicial Circuit and District of Louisiana.

CLERK'S OFFICE.

I hereby certify that the foregoing deed of sale has this day been recorded in this office in full, in Book of Deeds No. 3, folios 194 to 198, inclusive.

Witness my hand and seal of said court, at New Orleans, this 14th day of August, 1873.

F. A.,
By F. B. VINET, *D'y Clerk.*

STATE OF LOUISIANA, }
Parish of East Carroll. }

I, Wm. Rous, clerk of the 8th district court and *ex officio* recorder in and for said parish, do hereby certify that the foregoing is a true copy of the original deed now on file in this office, and that the same is duly recorded under date of Sept. 3rd, 1873, in Notarial Book "O," folios 496 & 499.

[SEAL.] Witness my hand and seal of office this 11th day of November, A. D. 1885.

Clerk & ex Officio Recorder.

146 STATE OF LOUISIANA, }
Parish of Carroll. }

OFFICE OF THE STATE TAX COLLECTOR.

Whereas I. R. K. Anderson, State tax collector of the State of Louisiana for the parish of Carroll, by virtue of the power vested in me by law and in accordance with section 4, act No. 47, entitled "An act to enforce the payment of taxes due the State, providing for the seizure and sale of the property of delinquent tax-payers and regulating the proceedings against them and against their property and tenants," approved March 14, 1873;

And having made the necessary publications and advertisements, to wit, in the "Lake Republican," a newspaper published in the parish of Carroll, said publications having been made on the 28th day of November, A. D. 1874, and having complied with all the formalities required and specified in the act aforesaid, did expose at public auction on the 10th day of December, 1874, at the door of the court-house, in the parish of Carroll aforesaid, the following-described property, to wit:

The upper part of lot No. 7, in township 19, range 17, and lot 1, north half of lot 2, lot 44, and part of lots 43 & 48; a portion
147 of the north half of section 56 and 60 acres of section 51, township 19, range 13, containing 764 acres, more or less, the same having been seized for the payment of taxes due by George Foster as owner thereof, according to the tableau and assessment rolls for the year 1873, at which sale William A. Gwyn, residing in New Orleans, La., being the last and highest bidder, the said property was adjudicated to him for the price and sum of fifteen hundred and five dollars, which I hereby acknowledge to have received, as follows:

In cash, the amount of taxes due the State, $179.71; in cash, the amount of taxes due the parish, $178.71; in cash, the amount — judgment tax, $129.41; in cash, the amount of costs of advertising, $3.00; in cash, the amount of recording, $1.50; in cash, the amount of collector's fees, $2.25; in cash, the amount of auditor's fees, $2.00; in cash, the amount of overplus, $1,008.42, making the sum total of $1,505.00.

It being, however, well understood and hereby expressly stipulated that in conformity with law the owner of said property or any agent of the owner may redeem the same at any time within six months after the day of sale by paying the purchaser, his heirs or assigns, the above sum of $1,505.00, paid in cash, with fifty per
148 cent. additional, and all costs, and in accordance with the provisions and under all the conditions named in said act No. 47 of 1873, and especially of the sixth section of said act.

The word "creditor," in sixth line above, erased by me before signing.

In witness whereof I have hereunto subscribed my name, at Lake Providence, parish of Carroll, this 10th day of December, 1874, and the 99th year of the Independence of the United States of America.

R. K. ANDERSON,
Tax Collector.

In presence of—
S. D. OLIVER.
J. S. MILLIKEN.

STATE OF LOUISIANA,
Parish of East Carroll.

I, Wm. Rous, clerk of the 8th district court and *ex officio* recorder in and for said parish, do hereby certify that the foregoing is a true copy of the original deed now on file in this office, and that the same is duly recorded under date of December 16th, 1874, in Notarial Record "P," folios 26 & 27.

Witness my hand and seal of office this 11th day of November, A. D. 1885.

[SEAL.]

WM. ROUS,
Clerk and ex Officio Recorder.

149 STATE OF LOUISIANA, }
Parish of Carroll. }

OFFICE OF THE STATE TAX COLLECTOR.

Whereas I, R. K. Anderson, State tax collector of the State of Louisiana for the parish of Carroll, by virtue of the powers in me vested by law and in accordance with section 4 of act No. 47, entitled "An act to enforce the payment of taxes due the State, providing for the seizure and sale of the property of delinquent tax-payers and regulating the proceedings against them and against their property and tenants"—

Approved March 14th, 1873—

And having made the necessary publications and advertisements, to wit, in the Lake Republican, a newspaper published in the parish of Carroll, said publications having been made on the 28th day of December, A. D. 1874, and having complied with all the formalities required by and specified in the act aforesaid, did expose at public auction, on the 10th day of December, 1874, at the door of the court-house, in the parish of Carroll aforesaid, the following-described property, to wit:

Lots 41 & 42 and part of 43 & 48, containing four hundred
150 and seventy-two acres, in township 19, range 13; lower part of lot 7 and lot 8, in township 19, range 14, containing 157 acres; a portion of the north half of section 56, township —, range 13, containing 243 acres, and containing in all eight hundred and seventy-two acres, more or less, the same having been seized for the payment of taxes due by John H. Green, as owner thereof, according to the tableau and assessment rolls for the year 1873; at which sale William A. Gwyn, residing in New Orleans, Louisiana, being the last and highest bidder, the said property was adjudicated to him for the price and sum of one thousand and one dollars and no cents, which I hereby acknowledge to have received, as follows:

In cash, the amount of taxes due the State	$174 36
In cash, the amount of taxes due the parish	174 36
In cash, the amount of judgment due	126 26
In cash, the amount of costs of advertising	3 00
In cash, the amount of costs of recording	1 50
In cash, the amount of collector's fees & notice	2 25
In cash, the amount of auditor's fee	2 00
In cash, the amount of overplus	517 27
Making the total sum of	$1,001 00

It being, however, well understood and hereby expressly stipulated that in conformity with law the owner of said property or any agent of the owner may redeem the same at any time
151 within six months after the day of sale by paying the purchaser, his heirs or assigns, the above sum of one thousand and one dollars, paid in cash, with fifty per cent. additional and all costs—

And in accordance with the provisions and under all the condi-

tions named in said act No. 47 of 1873, and especially of the sixth section of said act.

The words "creditor" and "or," in the sixth line above, erased by me before signing.

In witness whereof I have hereunto subscribed my name, at Lake Providence, parish of East Carroll, the 10th day of December, one thousand eight hundred and seventy-four, and the ninety-ninth year of the Independence of the United States of America.

R. K. ANDERSON,
Tax Collector.

In presence of—
S. D. OLIVER.
J. S. MILLIKEN.

STATE OF LOUISIANA,
Parish of East Carroll.

I, Wm. Rous, clerk of the 8th district court and *ex officio* recorder in and for said parish, do hereby certify that the foregoing is a true copy of the original deed now on file in this office, and that the same is duly recorded, under date of December 16th, 1874, in Notarial Record "P," folio 27.

Witness my hand and seal of office this 11th day of November, A. D. 1885.

[SEAL.]

WM. ROUS,
Clerk & ex Officio Recorder.

152 STATE OF LOUISIANA,
Parish of Carroll.

OFFICE OF THE STATE AUDITOR.

Whereas R. K. Anderson, State tax collector of the State of Louisiana for the parish of Carroll, by virtue of the power in him vested by law as tax collector as aforesaid, after having fulfilled and complied with all the previous legal requisites, did seize and sell at public auction the following-described property, viz:

Lot 41 and 42 and part of 43 & 48, containing four hundred and seventy-two acres, in township 19, range 13; lower part of lot 7 and lot 8, in township 19, range 14, containing 157 acres; a portion of the north half of section 56, township 19, range 13, containing 243 acres, and containing in all eighty hundred and seventy-two acres, more or less, being the property of John H. Green, as per assessment-roll of the State of Louisiana of the year 1873, to satisfy a debt due said State for the unpaid taxes of the year eighteen hundred and seventy-three, unto William A. Gwyn, he being the last and highest bidder, on the tenth day of December, 1874, at the court-house door, in the parish of Carroll, State of Louisiana, for the price and sum of one thousand and one dollars, then and there in hand paid by said William A. Gwyn to said R. K. Anderson;

And whereas the said R. K. Anderson did, on the twelfth day of December, 1874, by virtue of the laws of the State of Louisiana in

such case made and provided, make, execute, and sign a deed
153 or act of sale transferring unto the said William A. Gwyn, in the name of the State of Louisiana, all the right, title, and interest of said John H. Green in and to the aforedescribed property, which act of sale was duly inscribed in the record of conveyances of the said parish in Book "P," folio 27, on the sixteenth day of December, 1874;

And whereas due proom has been made to me by B. H. Lanier, present collector, of the facts aforementioned, and that the said property has not been redeemed by the owner or any legal authorized agent within six months from the day of sale aforesaid:

Now, therefore, I, Charles Clinton, auditor of public accounts of the State of Louisiana, under and by virtue of the authority in me vested by law and by virtue of section 6 of an act of the legislature of the State of Louisiana approved March 14th, 1873, being act No. 47 of the Session Acts of 1873, do hereby ratify and confirm, with full and complete title, in the name of the State of Louisiana, unto the said William A. Gwyn, purchaser aforesaid, his heirs and assigns forever, all and singular the aforedescribed property and all the right, title, and interest which the said John H. Green has or had in or to the same.

In witness whereof I have hereunto signed my name and affixed my seal of office, in the presence of Dan. A. Rose and Charles
154 G. Victor, competent witnesses, at New Orleans, State of Louisiana, this fourteenth day of July, one thousand eight hundred and seventy-five, and the ninety-ninth year of the Independence of the United States of America.

____ ____,

— *Public Accounts of the State of Louisiana.*

Witnesses:
DAN. A. ROSE.
CHARLES G. VICTOR.

STATE OF LOUISIANA, }
Parish of Carroll. }

I, Wm. Rous, clerk of the 8th district court & *ex officio* recorder in and for said parish, do hereby certify that the foregoing is a true copy of the original deed now on file in this office, and that the same is duly recorded, under date of August 23rd, 1875, in Notarial Book "P," folio 197.

Witness my hand and seal of office this the 11th day of November, A. D. 1885.

[SEAL.]

WM. ROUS,
Clerk & ex Officio Recorder.

155 STATE OF LOUISIANA, }
Parish & City of New Orleans. }

Be it known that on this sixteenth day of December, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independance of the United States of America the one hundred and

sixth, before me, Andrew Hero, Jr., a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared—

William A. Gwyn, of this city, who declared that, for the consideration and on the terms and conditions hereinafter expressed, he does by these presence grant, bargain, sell, convey, transfer, assign, and set over, with all legal warrents as regards his own acts and deeds, unto—

George Foster, of the parish of East Carroll, in this State, here present, accepting and purchasing for himself, his heirs, and assigns, and acknowledging delivery and possession thereof, all and singular those certain tracts or parcels of land, together with the buildings and improvements thereon, and all rights, ways, privileges, and appertenances thereunto belonging or in anywise appertaining, situated in the parish of East Carroll, in this State, including all rights of alluvion or batture thereto attached, bounded and described as follows, viz:

156 First. A tract of land fronting on the Mississippi river, bounded above by the Railey plantation, below by lands of George R. Newman, and in the rear by lands of the heirs of Wm. Henderson, and composed of lots Nos. forty-one, forty-two, forty-three, & forty-four, and part of lot No. forty-eight, in township No. nineteen north, range No. thirteen east, and lot No. one and north half of lot No. 2, in township No. nineteen north, range No. fourteen east.

Second. A tract of land fronting on the River Mississippi, bounded above by lands of George R. Newman, and below by lands of the heirs of Wm. Henderson, closing to a point in the rear and composed of lots Nos. seven and eight, in township No. nineteen north, range No. fourteen east, with the accretions of batture formed in front thereof; and,

Third. A tract of land or plantation composed of the north half of section No. fifty-six and the south half of lot No. 5, in township No. nineteen north, range thirteen east, and bounded south by the Carondelet plantation, belonging to Mrs. Montgomery, east by Carondelet plantation and lands of I. Beard, north by Galloway & Illawarca places, and west by the Ballard place; to have and to hold the said property and appertenances unto the said purchaser, his heirs, and assigns forever.

157 And the said vendor hereby binds himself and his heirs forever to warrent and defend the property and appurtenances herein conveyed against all legal claims and demands whatever as regards his own acts and deeds, but none others. The said vendor, moreover, transfers unto the said purchaser all the rights and actions of warranty to which he is or may be entitled against all the former proprietors of the property herein conveyed, subrogating said purchaser to the said rights and actions, to be by him enjoyed and exercised in the same manner as they might have been by the said vendor.

This sale is made and accepted for and in consideration of the

price and sum of five thousand dollars, which said sum the said purchaser has paid cash, in ready current money, at the execution hereof and in the presence of the undersigned notary and witnesses unto the said vendor, who hereby acknowledges the receipt thereof and grants said purchaser a full acquittance and discharge therefor; and the parties hereto declared that the present vendor acquired said property at the public sale made by R. K. Anderson, State tax collector of Carroll parish, on December 10th, 1874, which was confirmed by the auditor of public accounts on July 14, 1875, and that the production of a certificate from the clerk of court and
158 *ex officio* recorder of said parish of East Carroll for annexation hereto, as is otherwise required by law, is dispensed with.

Thus done and passed, in my office, in New Orleans aforesaid, in the presence of John J. Ward and Paul A. Ory, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

WM. A. GWYN.
GEORGE FOSTER.

JNO. J. WARD.
P. A. ORY.

ANDREW HERO, JR., *Not. Pub.*

A true copy from the original act on file and of record in my office.

New Orleans, December 16th, 1881.

ANDREW HERO, JR., *Not Pub.*

STATE OF LOUISIANA, }
Parish of Carroll. }

I, Wm. Rous, clerk of the 8th district court & *ex officio* recorder in and for said parish, do hereby certify that the foregoing is a true copy of the original deed now on file in this office, and that the same is duly recorded, under date of December 29th, 1881, in Notarial Book "Q," folios 361 & 362.

Witness my hand and seal of office this 11th day of No-
[SEAL.] vember, A. D. 1881.

WM. ROUS,
Clerk & ex Officio Recorder.

159 STATE OF NEW YORK, }
County of New York, City of New York. }

Be it known that this day, before me, Charles Nettleton, a commissioner of deeds for the State of Louisiana, duly commissioned and qualified in and for the State, county, and city of New York, and in the presence of the witnesses hereinafter named and ensigned, personally appeared Ezra Wheeler, a resident of this city, acting herein for the firm of Ezra Wheeler & Co., domiciliated and doing business in this said city, county, and State, being composed of Ezra Wheeler, Thomas Roundey, Jr., Augustus Ireland, & John V. Wheeler, all residents of the city and county of New York, in the State of New

York, and the said appearer declared for said firm and each member thereof that for and in consideration of the total price and sum hereinafter mentioned and payable in the manner hereinafter expressed he has bargained, sold, and delivered and does hereby bargain, sell, convey, assign, transfer, set over, and deliver, with a full g-arantee & warranty against all troubles, debts, mortgages, or other encumbrances whatever, not only against the acts and deeds of said firm of Ezra Wheeler & Co. or either of the members thereof, but also against their vendors, hereby subrogating the present pur-
160 chaser to all their rights of action for warranty against their vendors that the- could have used themselves, unto George Foster, a resident of the parish of East Carroll, State of Louisiana, the following-described lands, situated and lying in said parish & State, to wit: All of lots Nos. 41 & 42, all that portion of lots 43 & 48 on the west or upper side of a line running through said lots 43 & 48, containing 472.41 acres, as per survey and sketch of survey made by Rob't Boyd, surveyor, in January, 1870; also all of section or lot No. 8 and that part of sec. or lot 7, in township No. 19 north, of range No. 14 east, as lies on the south side of a line running through said lot No. 7 so as to embrace 157.15 acres, and also 243.41 acres of the north half of section No. 56; all of which lands are fully delineated and described in the deed of S. B. Packard, United States marshal, in pursuance of a writ of seizure and sale is-ued in the suit of Ezra Wheeler & Co. *vs.* John H. Green, numbered on the docket of the United States circuit court for the district of Louisiana 6972, which deed was executed on the 2nd day of August, A. D. 1873, and duly recorded in the recorder's office of the parish of East
161 Carroll, Louisiana, in Notarial Book "O," folios 496 & 497, on the 3rd day of September, A. D. 1873, the land hereby conveyed being the same acquired by the purchase at the marshal's sale, as evidenced by said deed just before referred to:

To have and to hold the said described lands, with all the buildings, machinery, and improvements thereon, and all the rights, ways, and privileges thereto belonging, unto the said George Foster, his heirs and assigns, for his and their own proper use, benefit, and behoof forever.

This sale is made for and in consideration of the total price and sum of seven thousand two hundred and forty-three dollars, in part payment whereof the said George Foster has paid in cash the sum of twenty-two hundred and forty-three dollars ($2,243), the receipt of which is hereby acknowledged by the said Ezra Wheeler & Co., vendors, and for the remainder the said George Foster has furnished & delivered to the said Ezra Wheeler & Co. his two certain orders for the sum of twenty-five hundred dollars each, drawn at "Pecan Grove plantation," September 12th, 1881, on and accepted by A. H. Foster, of Evansville, Indiana, to the order Ezra Wheeler & Co., the first on or before the 1st day of January, 1883, and the second
162 on or before the first day of January, 1884, with interest from date at six per cent. per annum and with exchange on New York. And to secure the payment of said orders or acceptances in principal, interest, and exchange the vendors hereby retain the ven-

dors lien on all of the said property hereinbefore described & conveyed, and further to secure the payment of said acceptances with interest and exchange and any eventual costs that may be incur-ed by reason of having to institute legal proceedings to collect the same, it is understood and required that the said George Foster shall execute a mortgage on said property in favor of these vendors before Sanders D. Oliver, a notary public in and for said parish of East Carroll, Louisiana, without unnecessary delay, and is also stipulated that this act is not complete, and the recorder of said parish and State is forbidden to record the same until said mortgage is executed.

The said George Foster not being present or represented at the passing of this act of sale, it is stipulated that he may accept the same formally before the said Sanders D. Oliver, notary public, in the parish of East Carroll, Louisiana, after receipt of this
163 document. In order to fully identify the acceptances hereinbefore described with the act of mortgage hereafter to be executed by the same George Foster, the said Sanders D. Oliver, notary public, did on the 12th day of October, A. D. 1881, mark each thereof with the words "*ne varietur*" and signed the same officially.

This done and signed at my office, in the city, county, and State of New York, in presence of Charles Edgar Mills and Charles Lake Beaman, witnesses of lawful age, residing in this city, who hereto sign their names, together with said appearer and me, commissioner, on this the 24th day of October, A. D. 1881.

Witness my hand & official seal.

EZRA WHEELER.

CHARLES EDGAR MILLS.
CHAS. LAKE BEAMAN.

CHARLES NETTLETON,
Commissioner for Louisiana in the City of New York, in the State of New York.

164 STATE OF LOUISIANA, }
Parish of East Carroll. }

I, Wm. Rous, clerk of the 8th district court & *ex officio* recorder in and for said parish, do hereby certify that the foregoing is a true copy of the original deed now on file in this office, and that the same is duly recorded under date of Nov. 30th, 1881, in Notarial Book "Q." folios 349, 350, & 351, and in Mortgage Book "U," folios 535, '36, '37, & 38.

[SEAL.] Witness my hand and seal of office this the 11th day of November, A. D. 1885.

WM. ROUS,
Clerk & ex Officio Recorder.

165 *Subpœna in Chancery.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the western district of Louisiana, Greeting:

You are hereby commanded to summon Mrs. Agness M. Scanlan, Mrs. Narcissa J. Green, residents of the city of St. Louis and citizens of the State of Missouri, and Ezra Wheeler, Thomas Rounday, and Augustus Ireland, residents of the city of New York and citizens of the State of New York, to appear before the honorable the judges of the fifth judicial circuit of the United States of America at a circuit court to be holden at the city of Monroe, Louisiana, on the first Monday of January, A. D. 1886, then and there to answer bill in chancery filed against George Foster *et als.*, wherein Heirs of J. C. Pickett are complainants and said Geo. Foster *et als.* are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city [SEAL.] of Monroe, this 30th day of November, in the year of our Lord one thousand eight hundred and eighty-five, and the 110th year of American Independence.

J. B. BEATTIE, *D'y Clerk.*

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the first Monday of January, A. D. 1886; otherwise the bill may be taken *pro confesso.*

J. B. BEATTIE, *D'y Clerk.*

165½ Received in office on Dec. 1st, A. D. 1885, and, being unable to serve this subpœna on the parties to whom addressed, they being out of the district and State, I having made enquiry for them and not being able to find them or any representative of them on whom said service could be made, do this day return said subpœna for said reasons. Done and signed this Dec. 7th, A. D. 1886.

W. H. HANNA, *D'y Marshal.*

[Endorsed:] United States circuit court. No. 110. Heirs of J. C. Pickett *vs.* George Foster *et als.* Subpœna in chancery. Marshal's return. Filed Dec. 19th, 1885. J. B. Beattie, d'y cl'k.

166 *Subpœna in Chancery.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the western district of Louisiana, Greeting:

You are hereby commanded to summon George Foster and his wife, Mrs. Mary J. Foster, residents of East Carroll parish, Louisiana, and citizens of the State of Louisiana, to appear before the honor-

able the judges of the fifth judicial circuit of the United States of America at a circuit court to be holden at the city of Monroe, Louisiana, on the first Monday of January, A. D. 1886, then and there to answer a bill in chancery filed against George Foster *et als.*, wherein Heirs of J. C. Pickett are complainants and said George Foster *et als.* are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city [SEAL.] of Monroe, this 30th day of November, in the year of our Lord one thousand eight hundred and eighty-five, and the 110th year of American Independence.

J. B. BEATTIE, *D'y Clerk.*

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the first Monday of January, A. D. 1886; otherwise the bill may be taken *pro confesso.*

J. B. BEATTIE, *D'y Clerk.*

166½ [Endorsed:] United States circuit court. No. 110. Heirs of J. C. Pickett *vs.* Geo. Foster *et als.* Subpœna in chancery.

Marshal's Return. Filed Dec. 8th, 1885. *J. B. Beattie, D'y Cl'k.*

U. S. Circuit Court, Western Dist. of La.

HEIRS OF J. C. PICKETT *vs.* GEORGE FOSTER *et als.* } No. 110.

Received this written subpœna in chancery in this office on the 30th Nov., 1885, & on the 4th of December, 1885, served a certified copy hereof on George Foster & wife, Mrs. Mary J. Foster, by handing the same to George Foster in person in Carroll parish, about 150 miles from here.

W. H. HANNA,
D'y U. S. Marshal.

167 *Entry in Order Book.*

HEIRS OF J. C. PICKETT *vs.* GEO. FOSTER *et als.* } No. 110. In Equity.

MONDAY, *Jan. 2d, A. D.* 1886.

The defendant George Foster & wife, by their solicitors, C. J. & J. F. Boatner, enter their appearance in this cause.

168 *Demurrer of Geo. Foster.*

U. S. Circuit Court, 5th — Western Dist. of La.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et als.*

The demurrer of George Foster to the bill of complaint of the heirs of J. C. Pickett, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in said bill of complaint to be true in such manner or form as the same are therein and thereby set fourth and alleged, doth demer thereto & for cause of demurrer showeth that said complainants hath not by *his* bill made such a case as entitles them in a court of equity to any relief from or against this defendant touching the matters contained in said bill or any of such matters, in this:

1st. That the property upon which complainants aver that the deed of trust upon which they proceed rests was regularly seized and sold, as shown by their allegations and exhibits annexed to their said bill of complaint, on the 5th day of September, 1868, at which public & judicial sale John H. Green became the purchaser of a portion thereof and F. M. Goodrich became purchaser of the remainder.

169 That the judgments under which the said property was then sold & adjudicated recognised a legal and tacit mortgage as existing on the same to date & take effect from the 3rd day of December, 1855.

That said judgments and the mortgage securing payment of the same precedeed and was superior to the alleged deed of trust claimed by complainants, & the legal effect of said sale was to extinguish all mortgages or leins on the said property subsequent thereto.

2nd. That under the laws of Louisiana in force at the time of the alleged suit by Ben. H. Lanier, public administrator of the parish of Carroll, the public administrator was not authorized or empowered to assume the administration of any estate nor to act for or stand in judgment for any estate until after he had been authorised thereto by a special order of court having jurisdiction in the premises & until he had qualified, according to law, by taking the oath of office & causing an inventory & apprais-ment of the property to be made by the proper officers, and complainants do not allege that said B. H. Lanier ever applied for the administration of the estate of James Pickett or was ever appointed & qualified as such.

170 3rd. Complainant does not allege that said Pickett died in the State of Louisiana or parish of Carroll; that he had a domicil in said parish of Carroll, or that he left any property, rights, or credits situated in said parish at the time of his death or afterwards, and therefore does not show any estate in said parish of which

the public administrators could legally have obtained the administration.

4th. Complainants do not allege that there was any property or estate of J. C. Pickett of which this defendant was charged with the administration at the time of his accession to said office or afterwards.

5th. For the cause aforesaid no reason is alleged why this defendant was bound or had any right or authority to preserve or defend any of complainants' alleged rights by the reinscription of the mortgage or otherwise.

Nor does the said bill of complaint show any reason why the complainants themselves did not take the necessary steps to prevent their alleged rights, if any they had, from becoming barred by prescription and inscription of their so-called mortgage or deed of trust, and for the causes of demurrer above set forth and other good causes this defendant saith that it appears by complainants' own showing by *his* said bill of complaint that the said
171 complainants are not entitled to the relief prayed for by their said bill against the defendant.

Wherefore, and for other good causes of demurrer appearing in said bill of complaint, this defendant doth demur to the said bill and to all the matters & things therein entered, & hereby prays the judgment of this honl. court whether he shall be compelled to make any further or other answer to the said bill, and he prays to be herein dismissed with his reasonable costs in their behalf sustained.

C. J. & J. S. BOATNER, *Solicitors.*

We hereby certify that in our opinion the foregoing demurrer of George Foster, one of the defendants in the bill of complaint of the heirs of J. C. Pickett, is well founded in law and proper to be filed in the above cause.

C. J. & J. S. BOATNER, *Solicitors.*

Personal-y came and appeared before me, the undersigned authority, George Foster, who, being duly sworn, deposes and says that the foregoing demurrer is not interposed for delay.

GEO. FOSTER.

Sworn to and subscribed before me this the 30th day of Jan'y, A. D. 1886.

[SEAL.] J. B. BEATTIE, *U. S. Com'r.*

172 Endorsed: Demurrer of Geo. Foster. Filed Jan'y 30th, 1886. J. B. Beattie, d'y cl'k.

173 *Demurrer of Mrs. M. J. Foster.*

U. S. Circuit Court, 5th Circuit and Western District of Louisiana.
In Equity.

HEIRS OF J. C. PICKETT
vs.
GEO. FOSTER *et als.* } No. 110.

The demurrer of Mary J. Foster, one of the defendants, to the bill of complaint of the heirs of J. C. Pickett.

This defendant, by protestation, not confessing or acknowle-ging all or any of the matters and things in said bill of complaint to be true in such manner and form as therein and thereby set forth and alleged, doth demur thereto and for cause of demurrer showeth that the said complainants hath not by their said bill made such a case as entitle them in a court of equity to any relief from or against this defendant touching the matters contained in the said bill or of any such matters.

For this, that the alleged deed of trust herein sought to be enforced on the property described in complainants' bill is not a mortgage under the laws of Louisiana and cannot be enforced as such against persons not parties thereto.

She further avers that the said property was regularly seized and sold on the 5th day of September, 1868, under writs of *fieri*
174 *facias*, issued on judgments against the owners thereof, Mrs. N. J. Bell and A. N. Ricketts, which recognized legal & tacit mortgages as existing thereon since December, 1855, and the legal effect of such sale was to divest all mortgages and leins subsequent to that under which the said sales were made.

That if complainants had any mortgage or hypothecary rights growing out of the execution and registry of the alleged deed of trust on which they proceed herein, the same were ousted and destroyed by the judicial sale as aforesaid.

And by the effect of the pre-emption of said allegations & prescription of the alleged mortgage complainants having by their said bill of complaint shown no legal interruption thereof nor legal cause of relief against their own and negligence in failing sooner to assert their pretended rights.

Wherefore, and for other good causes of demurrer appearing in said bill of complaint, this defendant doth demur to said bill & to all the matters & things therein contained and humbly prays the judgments of this honl. court whether she shall be compelled to make any further or other answers to said bill, and she prays
175 to be herein dismissed with her reasonable costs in this behalf sustained.

C. J. & J. S. BOATNER, *Solicitors.*

We hereby certify that, in our opinion, the foregoing demurrer of Mrs. M. J. Foster, one of the defendants in the bill of complaint of

the heirs of J. C. Pickett, is well founded in law and proper to be filed in the above cause.

C. J. & J. S. BOATNER, *Solicitors.*

Personally came and appeared before me, the undersigned authority, Mrs. Mary J. Foster, who, being duly sworn, deposes and says that the foregoing demurrer is not interposed for delay.

MARY J. FOSTER.

Sworn to and subscribed before me this the 30th day of Jan'y, A. D. 1886.

J. B. BEATTIE,
[SEAL.] *U. S. Com'r.*

Endorsed: Demurrer of Mrs. M. J. Foster. Filed January 30, 1886. J. B. Beattie, d'y cl'k.

176 *Entry in Order Book.*

HEIRS J. C. PICKETT
vs. } No. 110.
GEO. FOSTER *et als.*

On motion of Messrs. Ludeling & Stillman, of counsel and solicitors for complainant in above entitled and numbered cause, the demurrers filed herein on the part of defendants Geo. Foster and wife are set down for trial at Shreveport on Tuesday, February 16th, A. D. 1886, or as soon thereafter as the same can be reached by the court.

Monroe, La., Feb. 8th, 1886.

177 *Notice of Trial of Demurrers & Marshal's Return.*

Circuit Court of the United States for the Fifth Judicial Circuit and Western District of Louisiana.

HEIRS OF J. C. PICKETT
vs. } In Equity. No. —.
GEO. FOSTER *et als.*

You are hereby notified that the demurrers filed here on behalf of Geo. Foster & wife, def'ts in this case, are assigned for trial for Tuesday, the 16th day of February, A. D. 1886, at 11 o'clock a. m., at Shreveport, La.

By order of court.

Witness my hand and seal of the said court, at Monroe, La., this 13th day of Feb'y, A. D. 1886.

J. B. BEATTIE, *D'y Clerk.*

To C. J. & J. S. Boatner, Esqs., solicitors for def'ts.

177½ [Endorsed:] No. 110. United States circuit court. Heirs J. C. Pickett *vs.* George Foster *et als.* In equity. Notice of trial.

Marshal's Return.

Received the within notice in office on Feb'y 13th 1886. On same day, month, and year made service by handing certified copy to John S. Boatner, counsel for defendant, at his office, in the city of Monroe.

E. T. LAMBKIN,
D'y U. S. Marshal.

Filed Feb'y 15th, 1886.

J. B. BEATTIE, *D'y Cl'k.*

178 *Extract of Minutes.*

TUESDAY, *February 23rd*, 1886.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

HEIRS J. C. PICKETT
vs.
GEO. FOSTER *et al.* } No. 110.

The argument on the demurrers filed herein came on to be heard at this time. Upon conclusion of the argument the court took time to consider.

Extract of Minutes.

MONDAY, *March 8th*, 1886.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

HEIRS J. C. PICKETT
vs.
GEO. FOSTER *et al.* } No. 110.

Demurrer dismissed by consent of deft's.

GEO. FOSTER.

179 *Extract of Minutes.*

MONDAY, *April 5th*, 1886.

HEIRS OF J. C. PICKETT
vs.
GEO. FOSTER *et al.* } No. 110.

Defendants, Geo. Foster & wife, through their solicitors, Mess. C. J. & J. S. Boatner, file their answers to the bill of complaint in the above-entitled cause.

180 *Answer of Geo. Foster.*

U. S. Circuit Court, Western Dist. of La. In Equity.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et als.* } No. 110.

The answer of Geo. Foster, one of the defendants, to the bill of complaint of the heirs of J. C. Pickett, complainants.

This defendant, now and at all times hereafter, saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, & imperfections in the said bill contained, for answer thereto or unto so much thereof as this def't is advised is material and necessary for him to make answer to, answering, saith:

First. That he is not advised whether Joseph Desha Picket and Theodore John Pickett are the heirs-at-law or sole heirs-at-law of James C. Pickett, as alleged and set forth in their bill of complaint herein, and therefore he does not admit the same to be true.

Second. He specially denies that the promissory notes set forth & described in said bill of complaint were ever secured by any mortgage or privilege upon the land and property therein de-
181 scribed and pretended to have been conveyed to Richard C. Ricketts, a pretended trustee, in order that he might hold the legal title to said lands in trust, to sell the same and pay the promissory notes to said James C. Pickett at their maturities, and denies that any mortgage or privilege could arise from such pretended and void deed of trust.

Third. This defendant, further answering, says that he supposes a paper or instrument in writing was drawn up and prepared at Memphis, in the State of Tennessee, and then signed by Agness M. Ricketts & Narcissa J. Bell, before J. M. Westcott, a Louisiana commissioner, on the 16th of January, 1866, purporting to transfer and convey to a trustee named therein two-thirds interest in the property situated in the State of Louisiana, described in said bill of complaint, in trust to sell the said interest to pay said promissory notes in favor of said James C. Pickett; but this defendant alleges and shows that said instrument called and designated by complainants as a mortgage or deed of trust was and is null and void for this, that the property sought to be effected by this void instrument was situated in the State of Louisiana and governed by the laws of said State, which expressly & in positive terms prohibit and
182 forbid substitutions, *fidei commissa*, & trust estates, and said void instrument called by complainants a "mortgage" or "deed of trust" is in contravention of the laws of Louisiana prohibiting trust estates and therefore void & no effect, and the registry of such void instrument in the mortgage books of the parish of Carroll did not effect the property therein described with a mortgage or lein or make the same valid so as to effect third persons.

Fourth. This defendant, further answering, says that the said Ferdenand M. Goodrich had been duly appointed by the proper court prior to said 16th day of Jan'y, 1866, as tutor to said Agnes M. Ricketts, *née* Morgan, & Narcissa J. Bell, *née* Morgan, and that there resulted, by oporation of law, in favor of said tutor a legal mortgage upon all the property of his said wards to secure the reimbursement of all such advances as he should make to them or their estate in his said capacity, said legal mortgage to date & take effect from the day of his qualifying as their tutor.

That in consequence of said tutorship it appeared in settlement thereof that the said Agnes M. Ricketts & Narcissa J. Bell were indebted to the said Ferdinand M. Goodrich, their tutor afore-
183 said, & on or about the 21st day of January, 1867, proceedings were instituted by him against the said Agness M. Ricketts & the said N. J. Bell for a judicial settlement of his accounts against them respectively & for a recognition of his legal mortgage upon their respective estates to secure the payment of the amounts due by them respectively, and that, after due & legal proceedings, the accounts of tutorship filed as aforesaid were homologated and approved by the proper officer, becoming executory as judgments and recognizing the legal mortgage of said Ferd. M. Goodrich upon the property of his several wards as aforesaid to secure the payment of said payments, and as dating from the 5th day of December, 1855; which said judgments bear date respectively on the 25th & 26th of January, 1867, as appears by the exhibits annexed to plaintif-s' bill of complaint.

That thereafter, to wit, on June 21st, 1868, writs of *fieri facias* were issued on said judgments respectively against Agnes M. Ricketts and Narcissa J. Bell, and the same were placed in the hands of the sheriff of the parish of Carroll for execution, who proceeded in the execution thereof to seize and take into his possession and
184 levy upon all right, title, and interest of the said judgment debtors in and to the property described in plaintif-s' bill of complaint, & after the service of the usual notice the said property was advertised to be sold in satisfaction of said writs.

That said property, persuant to said seizures & advertisements, was exposed for sale by the said sheriff at public auction on the 5th day of September, 1868, whereupon that portion of said property belonging to Mrs. Narcissa J. Bell was adjudicated to John H. Green for the price of eleven hundred & fifty-six $\frac{64}{100}$ dollars, and that portion belonging to Mrs. A. M. Rickets was adjudicated to Ferd. M. Goodrich for the price & sum of seventeen hundred and thirty-four dollars.

That the aforesaid proceedings were fairly and legal-y conducted, the property regularly seized, advertised, and sold under a legal & valid judgment, at public auction, & adjudicated to the last and highest bidders, whereby the said John H. Green & Ferd. M. Goodrich became the lawful owners of the portions respectively adjudicated to them as aforesaid.

185 Fifth. And this defendant, further answering, avers that the aforesaid Agnes M. Ricketts and Narcissa J. Bell confessed

and acknowledged the amount due by them respectively to their tutor aforesaid, and acquiesced in the seizure & sale of said property as aforesaid, whereby the adjudications of said sheriff to the said John H. Green & the said Ferd. M. Goodrich acquired, in addition to their effect as judicial & forced sales, the force and effect of conventional transfers by the said Mrs. A. M. Rickets & said Mrs. N. J. Bell to the said purchasers of the property aforesaid; that the effect of said sales & adjudications of the property aforesaid under the legal mortgages as aforesaid, dating from the 5th day of December, 1855, was to divest & oust all subsequent mortgages, leins, & encumberances upon the property so sold and pass the same free & unincumbered to the said purchasers, and that the sheriff of the said parish of Carroll, charged with the execution of said writs, as he was bound by law to do, caused the pretended mortgage or said deed of trust herein sought to be enforced by plaintiffs to be erased from the mortgage records of said parish and the same was not thereafter borne upon the records as notice to third persons of the existance of any claim, lein, or mortgage in favor of the said James C. Pickett or the *cestui que trust.* named in the
186 deed of trust aforesaid upon the said property.

Sixth. That the said John H. Green & Ferd. M. Goodrich were perchasers of said property in good faith, for a valuable consideration & by titles translative of property; that the sheriff's deeds to each of them were duly recorded in the proper public records of the parish of Carroll, and they went into possession of said property under the deeds & purchase aforesaid; that these said purchasers & their subsequent vendors have had the actual and adverse possession of said property since the 5th day of September, 1868, & this defendant pleads the prescription of ten years in barr of plaintiffs' action to annull the same.

Seventh. And this defendant, further answering, avers that an action to annull the sail- of said property as aforesaid, by reason of the failure of the sheriff to comply with any formality or proceeding whatsoever in the seizure, advertisement, or adjudication in making the same, are barred by the prescription of five years, which he special-y pleads in barr of the same.

187 Eighth. And defendant, further answering, avers that subsequent to the sale aforesaid the said Ferd. M. Goodrich reconveyed to the said Mrs. A. M. Ricketts the interest acquired by him in said lands at said sheriff's sale aforesaid, and this defendant had no knowledge whatever of the proceedings aforesaid or the exsistance of the pretended mortgage or deed of trust upon which plaintif-s proceed herein.

That at the time aforesaid and previously this defendant was engaged in the business of a cotton factor at the city of New Orleans, with his partner, Wm. A. Gwyn, under the style & firm name of Foster & Gwyn, & entered upon business relations with said Mrs. A. M. Ricketts, who, having again married, bore the name of Agnes M. Scanlan, & *bona fida* advanced and loaned to her in money & supplies for the purpose of cultivating her said plantation the sum of nineteen thousand dollars.

That in liquidation & settlement of said sum & to secure the payment thereof the said Mrs. A. M. Scanlan, with the consent and being special-y authorized thereto by her husband, R. M. Scanlan,
188 on the 23rd day of May, 1870, executed her promissory note for said sum of nineteen thousand dollars, payable one year after its date & bearing 8% per annum interest from date.

And on the same day the said Mrs. A. M. Scanlan, by authentic act, passed before D. C. Jenkens, a notary public, authorized by her said husband and being special-y authorised thereto by the Honl. Wade H. Hough, judge of the 13th judicial district of the State of Louisiana, & having jurisdiction in the premises, special-y mortgaged and hypothecated to and in favor of said Foster & Gwyn the property aforesaid to secure the payment, in principal and interest, of the note aforesaid to said Foster & Gwyn or any future holder thereof; all of which will appear by a duly certified copy of said act of mortgage annexed to and made part of this answer for greater certainty, in Exhibit No. —.

And this defendant further alleges that the aforesaid advanses were made by his firm as aforesaid and subsequent advances were made by them to said Mrs. A. M. Scanlan in good faith, due course of business, & in the full belief that she was the owner of the property aforesaid by unencumbered title.

189 That they were without any knowledge of the existence of the claim now asserted by plaintiffs, and the public records of the parish of Carroll gave no notice thereof; on the contrary, according to said records, plaintiffs' rights, of any they had, which is denied, were extinguished by the sale of said property on the 5th of September, 1868, under the judgment in favor of Ferd. M. Goodrich, as hereinbefore specifically set forth.

Ninth. That plaintiffs or their ancestors *cestui qui trust.*, if they or either of them believed they had any rights under the pretended deed of trust aforesaid, were guilty of gross laches & negligence and of a fraud on the public in thus permitting, without opposition or complaint, the consum-ation of the proceedings instituted by said Ferd. M. Goodrich as aforesaid, the cancellation of the said pretended deed of trust and the undisturbed possession for years by the purchasers at the sale aforesaid of the property upon which it is now claimed the same rested.

That had this defendant been aware there was any cloud
190 upon the title to said property or had plaintiffs reasonably made any efforts to enforce their said claim this defendant nor his said firm would not have made the advances aforesaid nor expended the large sums, as hereinafter shown, in the acquisition of the said property.

Tenth. This defendant, further answering, avers that the firm of Foster & Gwyn having endeavored prior to the 5th day of Feb'ry, 1873, to collect from said Mrs. Agnes M. Scanlan the large debt she owed to said firm without success, a compromise of the differences between them was entered into by which, among other things, it was agreed that this defendant was to acquire the whole interest of the firm of Foster & Gwyn in the debt and mortgage against Mrs.

Agnes M. Scanlan and to buy up and transfer a certain judgment and mortgage held by said firm against her husband, Robert M. Scanlan, and release the debt held against her personally and transfer to her the judgment and mortgage against her husband, to be held for her own use and benefit, in consideration of which she agreed to sell, transfer, and give in payment, by way of compromise, the said land hereinafter described; and on the 5th
191 day of Feb'y, 1873, the aforesaid agreement was carried into effect by a notarial and authentic act passed before T. B. Rhodes, a notary in and for said parish, by which, for the consideration aforesaid, the said Mrs. A. M. Scanlan, by & with the consent and authorization of her said husband, sold, transferred, & gave in payment to this defendant for a price, $36,904.94, the property acquired by her from Ferd. M. Goodrich, as aforesaid, being the same which it is alleged by plaintiffs is affected by the pretended deed of trust executed in 1866, as aforesaid, all of which will fully and at large appear by the act aforesaid, annexed to and made part of this answer as Exhibit No. — for a more complete description of said property and statement of the agreements therein made by the defendant with said Mrs. A. M. Scanlan; and this defendant, further answering, avers that the firm of Foster & Gwyn, having entered into business relations with John H. Green, who had purchased the said interest of Narcissa J. Bell in the land described in said bill of complaint, in the full belief that he
192 was the owner thereof by unencumbered title, & having made large advances to said John H. Green, he, on the 23d day of May, 1870, executed his promissory note in favor of said Foster & Gwyn for the sum of ten thousand dollars, payable to his own order & by him endorsed in — due twelve months after date, and to secure the punctual payment of said note and interest he on same day, by authentic act passed before D. C. Jenkins, notary public, specially mortgaged & hypothecated to and in favor of said Foster & Gwyn or any future holders of said note the aforesaid property, all of which appears by the copy of the act of mortgage, made part hereof as Exhibit No. —, and that said J. H. Green, to secure the payment of a promissory note for the sum of $37,23.60, executed an additional mortgage on the same property, in favor of same parties, on the 14th day of July, 1871, as appears by a copy of said mortgage, made part hereof for reference as Exhibit No. —, and on the 11th of March, 1872, the said John H. Green executed an additional mortgage on same property to same parties, to secure the payment of a note for $3,009.55, three thousand and nine $\frac{55}{100}$ dollars, for full particulars of which refer-
193 ence is made to Exhibit No. —, being a copy of said mortgage.

And defendant, further answering, says that said firm of Foster & Gwyn, being indebted in a large sum of money to Ezera Wheeler & Co., of New York, a firm composed of the persons named in plaintiffs' bill of complaint, transferred & deposited with them in pledge & as collateral security to the debt due them by Foster & Gwyn, among others, the notes of J. H. Green, as hereinbefore described,

which said Foster & Gwyn believed & said Ezera Wheeler & Co. believed to be secured by the first and only mortgages upon the property owned and possessed by J. H. Green.

That said notes not having been paid at their respective maturities, the said Ezera Wheeler & Co. proceeded in the United States court for the district of Louisiana to foreclose the mortgages securing the same, and obtained a decree ordering & directing the issuance of an order of seizure & sale against the said mortgaged property.

That pursuant to said order and claim a writ of seizure & sale was issued under and by virtue of which the marshal of the
194 United States for the district of Louisiana seized, levied upon, and took into his possession the aforesaid property, and, after service of the usual and necessary notices & making the necessary & legal advertisements, exposed said property for sale at public auction on the 2nd day of August, 1873, & the said Ezera Wheeler & Co. became the purchasers thereof, the aforesaid proceedings having been tried in cause No. 6972 on the docket of the said court, a transcript of which will be filed with and made part of this answer.

And this defendant avers that all the proceedings in obtaining & executing the said writ of seizure & sale *was* fairly and legal-y conducted, and by the adjudication aforesaid the said Ezra Wheeler & Co. became the lawful owners of said property.

That said purchase was made by said Ezra Wheeler & Co. for the sum of ten thousand three hundred and ninety-eight $\frac{20}{100}$ dollars, which sum, less the costs & expense of the foreclosure, was entered as a credit on said writ of seizure & sale.

And this defendant, further answering, avers that said firm
195 of Foster & Gwyn were indebted to said Ezera Wheeler & Co. in a much larger sum than the amount for which they purchased the said land & property known and designated as the "Bell or Morgan plantation;" and they on or about the 6th of October, 1873, agreed with this defendant that upon the payment by him in principal & interest of the debt due them as aforesaid they would sell and transfer to him the property purchased by them as aforesaid under the seizure & sale against J. H. Green.

That in order to enable him to pay the said debt he was to have the benefit of the rents and revenues of the property aforesaid, said revenues standing against the interest of the debt, and on the said 6th of October, 1873, the said Ezra Wheeler executed a written power of attorney by which this defendant, as their agent, was authorized and empowered to take possession of said property, protect and maintain the same, to collect the rents & revenues, &c., all of which appears by a duly certified copy of said power of attorney, made a part hereof as Exhibit No. —.

That pursuant to said procuratition this defendant did
196 take possession of said property & occupied the same until October, 1881, at which time, having paid the debt due by said Foster & Gwyn to said Ezra Wheeler & Co., except seventy-two hundred & forty-three dollars, they sold and transfer-ed the property to him for said sum, with full and legal warranty of said sum.

Twenty-two hundred and forty-three ^{00} dollars of said price was paid in cash, & for the balance he executed his two drafts on A. H. Foster for the sum of two thousand five hundred dollars, payable on the first day of January, 1883 & 1884, respectively, which drafts were duly accepted by the drawers thereof, and in addition were secured by a special mortgage & vendor's *lein* upon the property sold; all of which appears by a duly certified copy of said deed, annexed to plaintiffs' bill of complaint as an exhibit.

And this defendant, further answering complainants' bill of complaint, admits that said Ezra Wheeler & Co. conveyed said lands bought at the marshal's sale & tax sale to the defendant for
197 a good and valid consideration in good faith & for its full value, at the date mentioned in complainants' bill of complaint; but denies that the same was done with any fraudulent or collusive intent, but was so done in good faith and for the purpose of carrying out the commercial contracts and agreements between the two commercial firms & this defendant.

And this defendant, further answering complainants' bill of complaint, expressly denies that B. H. Lanier was ever the administrator of the estate of James C. Pickett or had any authority as public administrator to institute suit on said promissory notes of Agnes M. Ricketts & N. J. Bell; he denies that said notes were ever in the possession or under the control of said B. H. Lanier as public administrator, or that said notes were in the State of Louisiana at the time of the death of said J. C. Pickett.

He denies that said B. H. Lanier was ever appointed administrator of said estate or was qualified as such, or that an inventory of its effects was made, or any other act done to show the said estate in the State of Louisiana, from all of which he shows that the
198 suit alleged to have been brought in the name of said B. H. Lanier as public administrator was an absolute nullity and of no effect; that the name of said B. H. Lanier as public administrator was used by the party in possession of the said notes for the purpose of bringing suit on the same without any legal authority for so doing and without there being any legal capasity in said Lanier to act official-y in the said matter.

This defendant further denies that the estate of said J. C. Pickett could have been legally opened in the State of Louisiana, for the reason that he was not a resident of said State and left no property therein.

He further specially denies that the suit instituted in the name of B. H. Lanier against himself, Ezra Wheela & Co. & others, was dismissed by reason of any fraudulent design on part of this defendent to suppress the same or to defraud the estate or heirs of J. C. Pickett; he avers that he was absent from the State at the time
199 said suit was called out & dismissed and his attorney refused to prosecute the same or to make this defendant party thereto for the reason above stated that no such estate as that of J. C. Pickett had been opened in the parish of Carroll, the public administrator had not been appointed to take charge of or administer any such estate, and the notes, ostensibly the basis of said suit, were not on

file in the same, and defendant's predecessor, B. H. Lanier, in said office declared that he did not have & had not had possession of or control of the same.

And defendant avers that if said notes were in the parish of Carroll at that time they were in possession of the attorney for the owners or claimants, who returned the same to the persons from whom they received them with full information of what had been done & of the existing condition of the claim & of the property which the said notes & deed of trust were claimed to affect as a mortgage.

This defendant, further answering, specially denies that
200 he concealed from complainants any parts whatever in relation to said notes & property, or that he was bound to give them any information in regard to the same. He avers that he was not aware who were the owners of the claim or of the names or residence of complainants.

Further answering, he denies that complainants were relying upon the defendant as public administrator or upon any other administrator to enforce the payment of the said notes & pretended deed of trust, but that the same was returned to them by their attorney as aforesaid, & they were advised & believed that under the laws of the State of Louisana, as construed and enforced by the courts, the said pretended deed of trust was invalid & null & could not be enforced.

Further answering, this defendant denies that he obtained the office of public administrator for the purpose as alleged in said bill of complaint, but only accepted said office after the expira-
201 tion of the term of B. H. Lanier & at urgent solicitations of citizens of the parish of Carroll, and as public administrator he had no authority to prosecute said suit for the reasons hereinbefore stated.

Further answering, this defendant denies the charge of frauds and collusion between this defendant & Wm. A Gwyn in the tax sales referred to in plaintiffs' bill of complaint, and avers that said transactions were in good faith & had without reference to complainants' pretentions, which this defendant supposed had long since been abandoned.

Further answering, this defendant denies the charges of fraud, simulation, & collusion in plaintiffs' bill of complaint made against the decree & judgment of seperation of property obtained by this defendant's wife, Mrs. Mary J. Foster, against him; but avers that said judgment was rendered according to the laws of the State of Louisiana, upon proceedings fairly & legally conducted, as appears by the transcript of the said suit & judgment, made part of plaintiffs' bill as an exhibit.

202 That this defendant *bona fide* owed his said wife the sum of money for which she obtained judgment against him, and the same was fully established by competent & credible evidence in the said suit.

And this defendant, further answering, denies that he has been in the possession of the property purchased by his said wife in satis-

faction of her said judgment against him, other than he has resided thereon with his said wife & has managed it as her agent and representative.

And finally respondent avers that all the allegations of plaintiffs' bill of complaint charging defendant's transactions with Ezra Wheeler & Co., A. H. Foster, & John W. Foster as being fraudulent, simulated, or collusive are false and untrue, & that all said transactions were *bona fiede* in good faith & without reference to complainants' claim, which respondent has always, since they were brought to his notice, been advised by eminent counsel were invalid and without foundation under the laws of the State of Louisiana.

203 He specially pleads the prescription of five and ten years in bar of plaintiffs' action, in this, that no suit was brought to enforce payment of the said notes within five years from the time of their respective maturity, and that the pretended mortgage upon which plaintiffs proceed was not reinscribed within ten years after its original inscription in the mortgage records of E. Carroll parish, whereby the same became void and null as between the parties thereto.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged; without this, that there is any other matter, cause, or thing in the said complainants' bill of complaint contained material or necessary for this defendant to make answer unto and not herein & hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all of which matters & things this defendant is ready

204 & willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

C. J. & J. S. BOATNER, *Solicitors.*

Endorsed: Answer of Geo. Foster. Filed April 5th, 1886. J. B. Beattie, d'y cl'k.

205 *Answer of Mrs. Mary J. Foster.*

U. S. Circuit Court, Western District *Court* of Louisiana. In Equity.

HEIRS OF J. C. PICKETT *vs.* GEORGE FOSTER *et al.* } No. 110.

The answers of Mary J. Foster, wife of George Foster, she being separate in property from her husband, and of said George Foster, who has also made a separate answer for himself and in order to meet the exigencies of the case and to make a separate answer so far as needed on her behalf to complainants' bill of complaint.

This defendant, now and at all times hereafter saving and reserving unto herself all benefits and advantage of exception which can

or may be had or taken to the many errors, uncertainties, and imperfections in the said complainants' bill of complaint contained, for answer thereto or to so much and such parts as this defendants is advised is material and necessary for her to make answer to, and, answering, she saith—

That she is not advised whether the complainants are the
206 sole heirs of J. C. Pickett or whether as such they are the owners of the notes or obligations described in their bill of complaint, and as to those matters she demands proof.

2nd. She denies that her judgment of separation of property from her said husband was fraudulent, collusive, or simulated, and avers that her said husband *bona fide* owed her the sum for which she obtained judgment against him; that her suit against him was instituted & prosecuted for the *bona fide* purpose of recovering the amount due her by him for paraphernal funds received and used by him in his own business and for the purpose of protecting her separate and paraphernal rights; that the proceedings in said suit anterior to the rendition of said judgment and subsequently in the execution thereof were, so far as defendant knows or is advised, fairly & legally conducted, and that she has become by the execution of said judgment the *bona fide* and legal owner thereof, and she expressly denies that she was any party to or was aware of any proceedings
207 had in dismissing the suit brought by B. H. Lanier, as public administrator, or was a party to or was affected by any of the proceedings of her husband as public administrator, or that the property aforesaid is affected by any mortgage resulting from the recordation of his official bond as such.

3rd. She avers that she was no party to the proceedings by which the several titles of Mrs. A. M. Ricketts and Mrs. N. J. Bell to the property described in plaintiffs' bill of complaint became divested, and by which, through the several sales and conveyances detailed in plaintiffs' bill of complaint, George Foster finally became owner thereof, and is therefore not affected by any frauds or causes of nullity not apparent on the records.

4th. That at the time she acquired the property in controversy at sheriff's sale under her judgment against the said George Foster he was, as she was advised and believes, the lawful owner thereof according to the public records of East Carroll parish, and this defendant acquired the same free of any latent defects or causes
208 of nullity therein, and that she by the purchase under said judgment obtained and has since held the actual possession and enjoyment of said property where she has resided with her said husband.

5th. She shows that under the laws of the State *State* of Louisiana, as she is advised and believes, the deed of trust sued upon by plaintiffs was and is void and of no effect as against third persons and never operated a mortgage or lien upon the property therein described.

6th. That said deed of trust was erased from the mortgage records and cancelled on the 19th day of December, 1868, by the recorder of the parish of Carroll, and was not thereafter known or consid-

ered by the parties as operating a mortgage or lien upon the property.

That said cancellation resulted from a sale of said property made under judgments obtained by Ferd. M. Goodrich, tutor, *vs.* Mrs. N. J. Bell & Mrs. A. M. Rickets, which said judgments recognized a mortgage thereon in favor of said F. M. Goodrich to date & *take* effect from Dec. 5th, 1855.

209 7th. That the notes of said Mrs. A. M. Ricketts & N. J. Bell, described in plaintiffs' bill of complaint, are barred by the prescription of five years, which she hereby pleads against the same, no suit having been instituted to enforce the same within five years of their respective maturities.

8th. That the deed of trust upon which they sue, even if it be treated as a mortgage, which she claims is barred by the prescription of ten years by reason of the fact that it was not reinscribed within the period of ten years from its original inscription and has never been reinscribed until after this respondent became owner of the property, which prescription she hereby specially pleads against the same.

And this defendant, being advised that the foregoing is sufficient answer to so much of complainants' bill as is directed against her, demurs to so much thereof as claims the nullity of the sales of said property on the 5th of September, 1868, under the judgments of Ferd. M. Goodrich *vs.* Mrs. N. J. Bell & Mrs. A. M. Ricketts, at which sales F. M. Goodrich and John H. Green became the pur-

210 chasers, and for cause of demurrer saith that, according to complainants' own showing, *that* all actions to set aside the said sales by reason of the nullities complained of are barred by the prescription of five years from the date of said sales, & no legal cause for the su*r*pression o*n* interruption of said prescription is by the bill shown.

And she further demurs and for cause of demurrer saith that the good faith of said Ferd. M. Goodrich & John H. Green in making the purchase aforesaid is not denied by the said bill, whereby the said parties, having acquired in good faith and by a title translative of property, and they & their vendees having had actual possession for more than ten years before the institution of this suit, all actions to annul the same became barred by the laps- of ten years from the date of their several purchases, and the said bill of complaint assigns no reason, either in law or equity, to suspend or interrupt the said prescription; and, further answering, she adopts all the allegations and defences made in the answer of Geo. Foster, who

211 has made *r*eperate answer for himself, except in so far as the same is modified or explained in this answer.

And this defendant denies all & all manner of unlawful combinations and confederacy wherewith she is by said bill charged; without this, that there is any other matter, cause, or thing in complainants' bill of complaint contained material or necessary for this defendant to make answer unto and not herein & hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all which matters

and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

C. J. & J. S. BOATNER, *Solicitors*,
By C. J. BOATNER.

Endorsed: Answer of Mrs. Mary J. Foster. Filed April 5th, 1886. J. B. Beattie, d'y cl'k.

212 *Entry in Order Book.*

MONDAY, *April 12th*, 1886.

HEIRS J. C. PICKETT
vs.
GEO. FOSTER *et als.* } No. 110.

Defendants Mrs. A. M. Scanlon & Mrs. J. H. Green file their answers to the bill of complaint in above entitled and numbered cause.

213 *Answer of Mrs. Agnes M. Scanlan and Mrs. Narcissa J. Green.*

Circuit Court of the United States, Fifth Circuit, Western Dist. of Louisiana.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et als.*

The answers of Agness M. Morgan, widow of R. M. Scanlan, & Narcissa J. Morgan, widow of J. H. Green, the defendants, to the bill of complaint of the heirs of J. C. Picket, plaintiffs.

These defendants, now & at all times hereafter saving to themselves all & all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, or imperfections in the said bill contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer, answering, say they borrowed the money & executed the mortgage, as alleged in the bill, & that legal proceedings were instituted against them and the property for its collection; that they were unable to pay said debt & others,
214 and that they were dispossessed of said property under judicial proceedings long ago. They aver that they are ignorant as to the allegations of the complainants' bill, except this: that they owed the money and mortgaged the plantation to J. C. Pickett, as alleged in said bill, and these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by said bill charged; without this, that there is any other matter, cause, or thing is said complainants' said bill of complaint material or necessary for these defendants to make answer unto and not herein &

hereby well and sufficiently confessed, traversed, and avoided or denied is true to the knowledge & belief of these defendants; all which matters & things these defendants are willing to aver, maintain, and prove as this honorable court shall direct, & humbly pray to be hense dismissed with their reasonable costs and charges in this behalf most wrongfully sustained. These defendants admit that they are the same parties who signed the notes and act
215 of mortgage upon which complainants' bill is based under their then names, Agnes M. Ricketts & Narcissa J. Bell, but subsequently your defendant Agnes M. Ricketts married Robert M. Scanlan, who is now dead, and subsequently your defendant Narcissa J. Bell married John H. Green, who is now dead.

AGNES M. SCANLON.
NARCISSA J. GREEN.

Witnesses:
WILLIAM H. SCANLAN.
CHARLES A. MAGEE.

STATE OF MISSOURI, }
City of St. Louis. }

Sworn to and subscribed before — this 26 day of February, A. D. 1886.

Witness my hand & official seal.

C. D. GREEN, JR.,
Commissioner for Louisiana at St. Louis, Missouri.

Endorsed: Answer of Mrs. Scanlan & Mrs. Green. Filed April 12th, 1886. J. B. Beattie, d'y cl'k.

216 *Extract of Minutes.*

MONDAY, *April 12th*, 1886.

Court met pursuant to adjournment.
Present: His honor Aleck Boarman, district judge, presiding.

HEIRS J. C. PICKETT }
vs. } No. 110.
GEORGE FOSTER *et al.* }

The demurrers filed herein on behalf of def'ts George Foster & his wife withdrawn.

Extract of Minutes.

THURSDAY, *April 29th*, 1886.

Court met pursuant to adjournment.
Present: His hon. Aleck Boarman, dist. judge, presiding.

HEIRS J. C. PICKETT }
vs. } No. 110.
GEO. FOSTER *et al.* }

Replication filed.

217 *Replication.*

U. S. Circuit Court, 5th Circuit, Western Dist. of Louisiana.

HEIRS OF PICKETT
vs.
FOSTER *et als.*

Replication of Heirs of Pickett, plaintiffs, to Foster *et als.*, defendants.

The plaintiffs, saving to themselves all and all manner of advantage of exceptions to the manifold insufficiencies of the answer, for replication thereto say that they hereby join issue with the defendants & will hear the cause on bill & answer against the defendants; & they humbly pray as in their bill they have already prayed.

LUDELING & STILLMAN, *Solicitors.*

Endorsed: No. 110. U. S. circuit court. Pickett *vs.* Foster *et als.* Replication. Filed April 29th, 1886. J. B. Beattie, d'y cl'k.

218 *Extract of Minutes.*

TUESDAY, *July 20th*, 1886.

HEIRS J. C. PICKETT
vs.
GEO. FOSTER *et als.*
No. 110.

On motion of Messrs. C. J. & J. S. Boatner, solicitors for defendants, it is ordered that the time for taking the testimony in this cause be extended until Oct. 1st, 1886; & it is further ordered that J. B. Beattie, deputy clerk, be appointed special examiner in this cause.

219 *Application for Commission to Take Testimony.*

In the Circuit Court of the United States for the Western District of Louisiana, Holding Session at Monroe.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et al.*
No. 110.

To the honorable the judges of said court:

The plaintiffs with respect show that the testimony of Joseph Desha Pickett, Theodore John Pickett, William H. Pickett, and William T. Withers, witnesses for plaintiff-, residing at Frankfort, Kentucky, is material and important to plaintiff- and in this behalf to the just decision of this cause and in answer to the annexed interrogatories.

Wherefore plaintiffs pray that after due notice hereof and after the legal delays *that* a commission issue, directed to any Louisiana

commissioner or United States commissioner or any judge or justice of the peace or notary public residing at Frankfort, Kentucky, to take the testimony of said witnesses in answer to said interrogatories, and that your honors fix a return day for said commissions.
220 They pray for all and general relief.

LUDELING & STILLMAN, *Solicitors.*

Before me, the undersigned authority, personally came & appeared Tolbot Stillman, of the law firm of Ludeling & Stillman, who, being sworn, deposes and says that the allegations of the foregoing application are true, to the best of his knowledge & belief.

Sworn to & subscribed before me this 25 day of August, A. D. 1886.

TALBOT STILLMAN.

J. B. BEATTIE, *D'y Cl'k.*

The foregoing petition and affidavit considered, and, the law authorizing it, let a commission — as prayed for, returnable on or before Oct. 10th, 1886.

Done and signed, in office, at Monroe, La, this the 25th day of August, A. D. 1886.

J. B. BEATTIE, *D'y Cl'k.*

221 Circuit Court of the United States for the Western District of Louisiana, Holding Session at Monroe.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et al.* } No. 110.

Interrogatories to be propounded to Joseph Desha Pickett, Theodore John Pickett, William H. Pickett, and William T. Withers, witnesses residing at Frankfort, Kentucky, whose depositions, when taken before a Louisiana commissioner or an United States commissioner or any judge, justice of the peace, or notary public or other party authorized to take depositions residing at Frankfort, Kentucky, will be read in evidence in behalf of complainants.

Interrogatory 1st. Are you or either of you acquainted with the parties to this suit or either of them?

Interrogatory 2nd. Did you know the late James C. Pickett?

Interrogatory 3rd. When did he die? Did he leave a will? Who was appointed administrator of his estate, and by what court?

Interrogatory 4th. Who were the sole surviving heirs of the late James C. Pickett?

Interrogatory 5th. Do you know or have you any knowledge of any claim or indebtedness that was owing to James C. Pickett at the time of his death by Mrs. A. M. Ricketts and Mrs. M. J.
222 Bell, of the parish of Carroll, Louisiana? If yea, state what you know about said claim. How was it evidenced? How was it secured? And describe it fully.

Interrogatory 6th. Do you know anything about this suit—who the complainants are and upon what claim it is founded?

Interrogatory 7th. If yea, and you say this suit is founded upon certain notes executed at Memphis, January 1st, 1866, by Mrs. A. M. Ricketts and Mrs. N. J. Bell in favor of James C. Pickett, secured by deed of trust on certain lands in the parish of Carroll, Louisiana, will you state into whos- hands said claim passed after the death of James C. Pickett and in what capacity it was held? Was it held by the administrator of James C. Pickett's estate appointed by the Fayette county court of Kentucky?

Interrogatory 8th. If yea, will you or either of you explain fully all you may know about said claim—to whom was it given, where was it sent, and what was done towards enforcing payment of said claim against the makers of said notes and the property encum-
223 bered in the deed of trust, situated in Carroll parish, Louisiana? To whom were said notes given, if to any one, to be brought to Louisiana for the purpose of having the same collected, and was there any agreement in relation to the collection of said notes made by the administrator of J. C. Pickett's estate and any other party or parties? State all you may know about the matter.

Interrogatory 9th. Who was the agent or agents employed by you, if any, to cause said notes and deed of trust to be enforced or foreclosed in Carroll parish, Louisiana? Please explain when this was and all you may know about it. Did you take any receipt or writing from said agent or agents? If so, annex the same to your answer.

Interrogatory 10th. If you or either of you say you sent said claim to Carroll parish, Louisiana, to have the deed of trust or mortgage foreclosed, will you state all you know about what was done with said claim?

Interrogatory 11th. Have you any knowledge concerning any suit brought to enforce the payment of said notes and the foreclosure of said deed of trust in the district court of the parish of Carroll, Louisiana? If so, state what suit was brought and
224 by whom, in whos- name was the suit brought in behalf of the estate of J. C. Pickett, and against whom was it brought and when was it brought?

Interrogatory 12th. Have you any knowledge that B. H. Lanier, public administrator, brought suit in the district court of the Parish of Carroll, La., in behalf of the estate of James C. Pickett, against the makers of said notes and Ezera Wheeler & Co. and George Foster, to enforce said claim and foreclose said deed of trust or mortgage against the hypothecated property? If yea, state all you know about it. What became of that suit? Did it result in a judgment, or was it dismissed? If so, when and by whom?

Interrogatory 13th. If you say the suit was dismissed by George Foster, public administrator, please state when did you first learn of the dismissal of that suit. Were you ever informed by George Foster or J. W. Montgomery, the attorney who brought the suit, or by B. H. Lanier, public administrator, or by any one else that said suit had been dismissed on the 4th of December, 1875, for want of prosecution by George Foster, public administrator?

Interrogatory 14th. Why was it that you delayed a renewal
225 of the suit or the bringing of a new suit on the claim during the long period that elapsed from the time said suit was discontinued by George Foster, public administrator, until the present suit was brought? Why did you not immediately renew the suit and proceed judicially to enforce the claim? What caused this long delay? Please explain all you know about this matter. Did you know that George Foster had been appointed public administrator to succeed B. H. Lanier, and that on the 4th of December, 1875, he caused said suit to be dismissed by refusing to continue the prosecution thereof; if so, when were you first informed of the fact?

Interrogatory 15th. Did you or either of you ever have an interview with George Foster; if so, when and where, at whose instance, and for what purpose?

Interrogatory 16th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this your examination or the matters in ques-
226 tion in this cause? If yea, set forth the same fully and at large in your answer.

W. G. WYLY, *Att'y.*

Endorsed: No. 110. In the circuit court of the United States for the western district of Louisiana. Heirs of J. C. Pickett *vs.* George Foster *et als.* Interrogatories to witnesses J. D. Pickett, T. J. Pickett, W. H. Pickett, and Wm. T. Withers. Filed August 25th, 1886. J. B. Beattie, d'y cl'k.

227 *Notice to Cross-Interrogatories and Marshal's Return.*

United States Circuit Court, Western District of Louisiana.

HEIRS J. C. PICKETT
vs.
GEORGE FOSTER *et als.* } No. 110.

To Mess. C. J. & J. S. Boatner, solicitors for defendants:

Take notice that complainants hath filed interrogatories to J. D. Pickett, T. J. Pickett, W. H. Pickett, and Wm. T. Withers, all of Frankfort, Ky.—a certified copy of said interrogatories accompanies this notice—and that you may, if you think proper, put such cross-interrogatories as are requisite and fit and file the same in this court within ten days from the service hereof.

Clerk's office, Monroe, La., Aug. 26th, 1886.

[SEAL.] J. B. BEATTIE, *D'y Clerk.*

227½ [Endorsed:] No. 110. U. S. circuit court. Heirs J. C. Pickett *vs.* George Foster *et als.* Notice to cross-interrogatories.

Received in office Aug. 26th, 1886, & on same day, month, and year I served a certified notice to cross-interrogatories on the law

firm of Boatner & Boatner by handing same to them at their office in the city of Monroe.

JAS. L. GIBSON,
Deputy Marshal.

Filed Aug. 26th, 1886.

J. B. BEATTIE, *D'y Cl'k.*

228 *Cross-Interrogatories.*

HEIRS OF PICKETT
vs.
GEORGE FOSTER *et als.*

Cross-interrogatories propounded by defendant George Foster to Joseph Desha Pickett, William H. Pickett, & Wm. T. Withers, witnesses for plaintiffs.

1st X Intg. If, in answer to 8th interrogatory-in-chief, you have stated that the notes enquired of were sent to Louisiana for collection, state by whom they were so sent & for whose account.

2nd X Intg. If, in answer to interrogatory-in-chief No. 9, you say that an agent was employed to foreclose the notes enquired of, state who that agent was & who employed him. If there was any written agreement or — of an agreement with the attorney or agent so employed, annex the original to your answer, or a copy thereof, to be certified by the commissioner who — your deposition.

3rd — Intg. To whom did you deliver possession of the notes enquired of?

4th — Intg. From whom did you recover possession of them after the dismissal of the suit instituted by J. W. Montgomery on
229 them in the name of Lanier, public adm'r, and when did you so recover them?

5th — Intg. In whose possession have said notes been since the termination of said suit, & to whom have they belonged?

6th — Intg. To whom do they belong now, and when did the present owners acquire the ownership thereof?

7th — Intg. From whom did you receive the information of the facts alleged to exist in plaintiffs' bill of complaint filed herein?

8th — Intg. Have you a written or verbal contract with your attorney, W. G. Wyly, in relation to the prosecution of this suit?

9th — Intg. Is it not a fact that you valued the claim in suit so lightly that you only permitted suit to be brought on it on condition that your att'y, W. G. Wyly, advanced the cash and took the case on a contingent fee?

10th — Intg. Why was no attempt made to enforce the asserted rights of pl'ffs while the property was in the hands of the
230 original owners & grantors of plaintiffs' alleged rights?

Defendants, reserving all legal objection to the admissibility of the testimony sought to be elicited from the witnesses named, propounds the following interrogatories & waives further delays.

C. J. & J. S. BOATNER, *Solicitors.*

Endorsed: No. 110. U. S. circuit court, western district of La. Heirs J. C. Pickett *vs.* Geo. Foster *et als.* In equity. Cross-intgs. Filed Sept. 1st, 1886. J. B. Beattie, d'y cl'k.

231 *Notice of Trial & Mar. Ret.*

Circuit Court of the United States for the Fifth Judicial Circuit and Western District of Louisiana.

HEIRS J. C. PICKETT
vs.
GEORGE FOSTER *et al.* } No. 110.

You are hereby notified that this case is assigned for trial for Wed., the 13th day of October, A. D. 1886, at 10 o'clock a. m.
By order of court:

J. B. BEATTIE, *D'y Clerk.*

Monroe, La., Oct. 7th, A. D. 1886.

To Mess. Ludeling & Stillman, Esq., solicitors for complainants.

231½ [Endorsed:] No. 110. United States circuit court. Heirs J. C. Pickett *vs.* Geo. Foster *et al.* Notice of trial.

Marshal's Return.

Received the within notice and certified copy of the same, in office, this the 7th day of October, 1886, and on the same day, month, and year made service of same by handing certified copy of same to Mr. Talbot Stillman, of the firm of Ludeling and Stillman, att'ys for complainants, in the town of Monroe, La.

A. C. GIBSON,
U. S. Marshal.

Filed October 9th, 1886.

J. B. BEATTIE, *D'y Cl'k.*

232 *Extract of Minutes.*

MONDAY, *October 11th*, 1886.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, district judge, presiding.

HEIRS OF J. C. PICKET
vs.
GEORGE FOSTER *et al.* } No. 110. In Equity.

On motion of counsel, this cause was assigned for trial on Friday, Oct. 15th, 1886.

Extract of Minutes.

MONDAY, *Oct. 14th*, 1886.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

HEIRS J. C. PICKETT
vs.
GEORGE FOSTER *et al.* } No. 110.

Affidavit for continuance filed on behalf of complainant-.
Case continued.

233 *Affidavit for Continuance.*

U. S. Circuit Court, 5th Dist., Western District of Louisiana.

HEIRS OF PICKETT
vs.
FOSTER *et als.*

John T. Ludling, one of the solicitors in this suit for plaintiffs, being duly sworn, states that Judge W. G. Wyly was employed by the plaintiffs to institute and prosecute this suit & he prepared the pleadings & he employed Ludling & Stillman to assist him in this case; that Judge Wyly, who is familiar with the facts in the case & knows the witnesses by whom the facts are expected to be proved, is absent & your affiant has been informed by telegram & letter that he cannot be here for the trial of this case because of the necessity of his presence at home while moving his house back from a caving bank, & because his presence will be required at the district court of East Carroll; that Judge Wyly desires to be present at the trial of the case, as he is more familiar with the history & facts of this case, & he informed affiant that he could not come at this time or at this term of the court; that Judge Wyly had assumed the
234 management of this case in so far as procuring the evidence in the case for the plaintiffs; that recently affiant discovered that certain evidence, which affiant is informed & believes can be procured, is wanting, and as soon as affiant learned the fact above stated he communicated with Judge Wyly by letter and subsequently by telegraph, who replied by asking affiant to get a continuance of this case & telling affiant he had written to defendants' solicitors asking them to consent to continue this case. Affiant is informed & believes that Mrs. Green & Mrs. Scanlan, defendants in this suit & residents of Missouri, he believes, & J. W. Montgomery, resident of E. Carroll, are material & competent witnesses in behalf of plaintiffs, and that he hopes & expects to procure their testimony by the next term of this court. He hopes & expects to prove by said witnesses or by some of them proscription of the mortgage notes (in favor of Pickett) sued on was interrupted by the acknowledegments of the debtors prior to the institution of the suit

by Lanier, public adm'r, or E. Wheeler & Co., and prior to the proscription of said notes. He swears that this application is not made for delay, but to subserve the ends of justice, & he believes
235 plaintiffs cannot safely go to trial without the testimony of said witnesses or some of them.

JNO. T. LUDELING, *Solicitor.*

Sworn to & subscribed before me, clerk of the 5th circuit court of the U. S., western dist. of La., this 14th day of Oct., 1886.

JNO. T. LUDELING.

J. B. BEATTIE, *D'y Clerk.*

Endorsed: Heirs of Pickett *vs.* Foster *et als.* No. 110. Affidavit for continuance. Filed October 14th, 1886. J. B. Beattie, d'y cl'k.

236 *Defendant's Application for Commission to Take Test'y; Int'g's & Order.*

U. S. Circuit Court, Western District La.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et als.*

Interrogatories propounded to Mrs. M. J. Foster, a witness for the defendants, the answers to which when taken under oath are to be read in evidence on behalf of defendants on trial of this cause.

1st. Are you one of the defendants herein & are you wife of George Foster, also defendant herein?

2nd. If you have answered that you are wife of George Foster, please state when you were married to him.

3rd. State whether or not you had any money or means of your own at the time of your mar-iage or acquired any afterwards. If yea, please state how much you so had or acquired, the source from which it was derived, & what disposition you made of it after it came to your possession.

4th. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the
237 subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

C. J. & J. S. BOATNER, *Solicitors.*

U. S. Circuit Court, Western District of Louisiana.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et als.*

Interrogatories propounded by defendants to George Foster, a competent and material witness, residing in the parish of East Carroll, the answers to which, when duly taken under oath, are to be used as evidence on the trial of the above cause in behalf of defendants.

Intg. 1st. Will you please state where you were residing during the years 1868, 1869, & 1870, & what business you were engaged in during those years?

Intg. 2nd. Please state if you ever knew John H. Green, of the parish of East Carroll, & Mrs. A. M. Scanlan, of same parish; if so, state when you became acquainted with them and whether Mrs. Scanlan was at that time a married woman or widow; if the former, who was her husband.

238 Intg. 3rd. If, in answer to the above interrogatories, you have stated that you were engaged in business as a cotton factor & commission merchant during the years 1868, 1869, & 1870, & that you had become acquainted with John H. Green & Mrs. A. M. Scanlan, please state whether you or your commercial house ever had any business relations with them or either of them. If yea, state the nature of those transactions, about what time they commenced, & how long they continued.

Intg. 4th. If, in answer to the preceeding interrogatory, you have stated that you made advances to Mrs. A. M. Scanlan for the purpose of enabling her to carry on the cultivation of her plantation, please state where the plantation was situated & how much, if any, balance of account was due you or your firm by said Mrs. Scanlan on or about the 23rd of May, 1870.

Intg. 5th. Please state whether or not you or your firm required of said Mrs. Scanlan any security for such advances as you made to her, either before or after making the same; &, if so, was any security furnished.

239 Intg. 6th. If, in answer to the preceeding interrogatory, you have stated that you obtained from Mrs. A. M. Scanlan the liquidation of the amount due your firm and a mortgage on her plantation to secure its payment on or about the 23d day of May, 1870, please state whether you took any steps to ascertain whether said Mrs. Scanlan's title to the property mortgaged was valid and whether there were any prior incumbrances, etc. If so, state what steps you took and the result thereof.

Intg. 7th. Please state whether you, at the time of your acquisition of the property in question, had any knowledge or had ever received notice of any kind of the existence of the claim herein asserted by pl'ff. If so, when and from what source?

Intg. 8th. If, in answer to the 3rd interrogatory, you have said that you or your firm had business relations with John H. Green,

please state the extent, if any, to which you made advances to him and the security, if any, which you required from him.

Intg. 9th. If, in answer to the above, you state that you required the liquidation of his indebtedness to your firm into notes
240 secured by mortgage, please state the amount of the several notes & date of mortgage securing payment of the same.

Intg. 10th. State whether you or your firm at the time of or prior to the execution of said notes had any knowledge or had rec'd any notice of the existence of any prior incumbrances on the property mortgaged or had any notice or knowledge of the claim asserted by complainants.

Intg. 11th. State whether or not you took any steps to ascertain the condition of the title to the property mortgaged by J. H. Green; &, if so, what information and advice relative to the same did you receive.

Intg. 12th. State what disposition, if any, was made by you or your firm of the notes you obtained from J. H. Green above enquired about.

Intg. 13th. It is charged in plaintiffs' bill of complaint that certain tax sales of the property in dispute were fraudulently & collusively made for the purpose of ousting complainants' alleged mortgage upon the same. Please state how said sales happened to be made and the objects and purposes thereof, so far as you know.

241 Intg. 14th. It is charged in plaintiffs' bill of complaint that you sought and obtained the appointment of public administrator of Carroll parish for the purpose of obtaining control of a certain suit brought against you and others by Lanier, public adm'r, & that as soon as appointed you declined to prosecute said suit & fraudulently caused the same to be dismissed. Please state whether the above charge is true or false, how you happened to apply for the office, and at whos- request you did so.

Intg. 15th. Did you ever see the notes sued on in this case; if so, when & where?

Intg. 16th. Were said notes filed or deposited with the suit of Lanier or yourself and other possessors of the property in question?

Intg. 17th. Did you make any efforts to find property of the estate of James C. Pickett or to ascertain if said James C. Pickett died possessed of any property in Carroll parish? If yea, what efforts did you make, and what was the result of your investigation?

Intg. 18th. How long have you lived in Carroll parish?
242 Have you ever known or heard of the James C. Pickett referred to in complainants' bill as a citizen or resident of that parish?

Intg. 19th. State how you became the owner of that portion of the property in dispute acquired from Mrs. A. M. Scanlan.

Intg. 20th. State how you became owner of that part formerly belonging to John H. Green and which was adjudicated to Ezra Wheeler & Co. at marshal's sale. State the agreement and understanding between yourself & Ezra Wheeler & Co. with reference to this property & how they became interested in the same.

Intg. 21st. It is stated in plaintiffs' bill of complaint that a certain mortgage executed by you on the property in dispute in favor of Ezra Wheeler & Co., under date of 30th Nov., 1881, and a mortgage in favor of John W. Foster, your brother, on 29th Dec., 1881, and a judgment in favor of Alex. Foster, under date of 17th of October, 1881, are & were mere shows, represented no real debt, and were concocted for the purpose of defrauding complainants. Please state the consideration of each one of these debts, and whether
243 the parties named had any knowledge of the existence of plaintiffs' pretentions or any fears so far as you know of the effect thereof on the property in question.

Intg. 22nd. Did you at the time of the execution of said mortgage have in view the existence of plaintiffs' pretentions? Did you at that time consider the claim serious or fear that it would ever be pressed?

Intg. 23rd. Where were you married to your present wife?

Intg. 24th. Had she any separate means at the time of your marriage, or did she acquire any subsequently; if so, how much & into whose hands did the same fall?

Int'g. 25th. Who is in the actual possession of the Jonathan Morgan plantation at this time? If you reside upon it, state in what capacity & by what right you do so.

Intg. 26th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to
244 this the subject of your examination or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

C. J. & J. S. BOATNER, *Solicitors.*

Let a commission issue in this cause, returnable on or before Monday, Oct. 11th, A. D. 1886, and Charles R. Egelly, Esq., is hereby appointed special commissioner to execute the same.

Thus done and signed in office this the 13th day of September, A. D. 1886.

J. B. BEATTIE, *D'y Cl'k.*

Endorsed: Filed September 13th, 1886. J. B. Beattie, d'y clerk.

245 *Notice to Cross-Interrogatories & Marshal's Return.*

United States Circuit Court, Western District of Louisiana.

HEIRS J. C. PICKETT
vs.
GEO. FOSTER *et als.* } No. 110.

To Mess. Ludeling & Stillman, solicitors for complainants:

Take notice that defendants hath filed interrogatories to George Foster & Mrs. M. J. Foster, of East Carroll parish, La., a certified copy of said interrogatories accompanies this notice, and that you

may, if you think proper, put such cross-interrogatories as are requisite and fit, and file the same in this court within ten days from the service hereof.

Clerk's office, Monroe, La., Sept. 14th, 1886.

[SEAL.] J. B. BEATTIE, *D'y Clerk.*

245½ [Endorsed:] No. 110. U.S. circuit court. Heirs J. C. Pickett *vs.* George Foster *et al.* Notice to cross-interrogatories. Filed Sept. 14th, 1886. J. B. Beattie, d'y cl'k.

Rec'd in office Sept. 14th, 1886, and on the same day, month, and year made personal service of a copy hereof and interrogatories on Talbot Stillman, of the firm of Ludeling & Stillman, att'ys for complainants, Monroe, La.

GEO. G. WEAKS, *D'y Mar.*

246 *Cross-Interrogatories.*

U. S. Circuit Court, Fifth Circuit, Western District of Louisiana.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et als.*

The plaintiffs reserve all legal objections to the testamony of Mrs. M. J. Foster & of George Foster, & especially object to their testamony for or against each other in this case, because they are husband and wife & are prohibited by law from testifying in favor of or against each other. They specially object to all heresay testamony or to the opinions of witnesses or others called for by the questions.

Cross-Interrogatories to Mrs. M. J. Foster.

1st. Where were you married to George Foster? When were you married to him?

2nd. If you say you had money when you married George Foster, state how much you had. Was it gold or silver or currency? Where did you keep it? What did you do with it? If you say you acquired any money after your marriage to Mr. Foster, state when, where, & how you acquired it; state how much it was. What did you do with it? If you had any other means than
247 money, state what it was & what you did with it.

3rd. Did you not lend whatever money or means you had to the firm of Ezra Wheeler & Co.; if not to that firm, to the firm of which your husband was a member?

4th. Did you not invest your money or means in the commercial firm of which your husband was a member? Was not that firm Ezra Wheeler & Co.?

5th. How much money did you receive from said firm after your money went into their hands or under their control? How much did you draw out of said firm?

Cross-Interrogatories to George Foster.

1st. When were you married and where?

2nd. What was the name or style of the firm in which you were a partner in the commission business in New Orleans?

3rd. If you say you or your firm did business with John H. Green & Mrs. A. M. Scanlan, annex copies of the accounts current between said firm and John H. Green & Mrs. A. M. Scanlan.

4th. Were you not public administrator of Carroll parish?

248 When were you appointed? How long did you remain in office? Who was your predecessor in said office?

5th. What effort, if any, did you make to ascertain if any property belonging to the estate of James C. Pickett was in the parish of East Carroll? Didn't you know that a suit on the mortgage notes in favor of James C. Pickett to foreclose a mortgage against property in your possession or that of your wife was pending in the district court of East Carroll? Did you ever communicate with James C. Pickett's heirs or try to discover their residence to inform them of your appointment as public administrator, or to notify them that you would have yourself as public administrator called at the door of the court-house to prosecute the said suit, or to have same dismissed? If so, when and how?

6th. Did you ever take any steps to inform the heirs of James C. Pickett that you could not prosecute their suit as public administrator, as you were also defendant? If so, when & how?

7th. Where were you when the suit of Lanier, public adm'r, *vs.* yourself was dismissed? Were you not in the parish? Were you not in the town of Providence? Were you not at the court-house?

249 Did you not know that your attorney intended to have the suit aforesaid dismissed by calling Lanier or yourself, as public administrator & successor to Lanier, to come forward and prosecute that suit?

8th. Where was Lanier at that time? Who was public administrator at that time?

9th. Didn't you know that Mrs. A. M. Scanlan & Mrs. J. H. Green had borrowed money from J. C. Pickett & given him an act of sale or mortgage to secure its payment before you acquired any rights to the property? Didn't you know such an act was recorded in the recorder's office in Carroll or East Carroll parish?

10th. Where were you married to your present wife?

11th. If she had any means, state when she acquired it & where & how. In what did it consist, money or personal effects or real estate? When did she receive it? Didn't she lend it to Ezra Wheeler & Co.? Didn't she invest it in the business of that firm?

LUDELING & STILLMAN, *Solicitors.*

[Endorsed:] No. 110. Cross-int'g's to George Foster & wife. Filed Sept. 18th, 1886. J. B. Beattie, d'y cl'k.

250 Circuit Court, Fifth Circuit, Western Dist. of Louisiana.

HEIRS OF PICKETT
vs.
GEORGE FOSTER & Others. } No. 110.

Interrogatories to be propounded to J. W. Montgomery, a resident of East Carroll, La., a material & competent witness in behalf of the complainants in the above entitled and numbered suit, whose testimony is to be used on the trial of said suit.

1st. What is your profession? Where did you reside since 1866?

2nd. Did you ever have for collection any note or notes in favor of J. C. Pickett? If aye, against whom were said notes?

3rd. Did you or did you not file suit on said note or notes? If yea, in whos- name was the suit brought? If in the name of Mr. Lanier, public administrator, why was it so brought?

4th. Did you or did you not demand payment of said notes of the makers prior to instituting the notes? If aye, did or did not
251 either of the makers of said notes acknowledge their correctness? Did or did not either of said makers or both of them promise to pay said notes? If aye, when was that? Was it before or after the institution of the suit aforesaid?

5th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case? If aye, set forth the same fully & at large in your answer.

JNO. T. LUDELING,
Solicitors for Complainant.

Service of these interrogatories is accepted, five days' delay being reserved to file objection & cross-interrogatories.

C. J. & J. S. BOATNER, *Solicitors.*

Let a commission issue to take the testimony of within-named witness, & Wm. Rous is hereby appointed sp'l com'r to execute the same and return day is fixed for April 4th, 1887. Done and signed, in office, this the 9th day of March, 1887.

J. B. BEATTIE, *D'y Cl'k.*

[Endorsed:] No. 110. U. S. circuit court, west. dist. La. Heirs of J. C. Pickett *vs.* Geo. Foster *et als.* Interrogatories. Filed M'ch 9, 1887. J. B. Beattie, d'y cl'k.

252 HEIRS OF PICKETT
vs.
GEO. FOSTER *et als.*

Cross-Interrogatories Propounded by Defendant to J. W. Montgomery.

1st. If, in answer to 2d interrogatory-in-chief, you answer that you had such notes as are described, state from whom you received them & when.

2nd. Did you annex said notes to the suit brought in the name of Lanier, public adm'r? If nay, why did you not do so?

3rd. Were you in possession of said notes at the time of the discontinuance of the Lanier suit? If yea, how long after the discontinuance of that suit did you return them? To whom did you return the notes & when?

4th. Did you ever demand or request that George Foster prosecute the suit instituted by Lanier?

5th. Were the notes ever under Foster's possession or control? If so, who gave them to him and when?

C. J. & J. S. BOATNER, *Att'ys.*

253 [Endorsed:] No. 110. Heirs of Pickett *vs.* George Foster *et als.* Cross-intgs. to J. W. Montgomery. Filed M'ch 15th, 1887. J. B. Beattie, d'y clerk.

254 *Extracts of Minutes.*

MONDAY, *April 11th*, 1887.

Court met pursuant to adjournment.

Present: His Hon. Aleck Boarman, dist. judge, presiding.

HEIRS J. C. PICKETT
vs.
GEORGE FOSTER *et al.* } No. 110. In Equity.

By order of court and consent of counsel this cause was assigned for trial at Shreveport, La., on the first Monday of the July term, A. D. 1887, being July 18th, 1887. Ordered that the time for taking testimony in this cause be enlarged until June 1st, 1887.

255 U. S. Circuit Court, Western District of Louisiana. In Equity.

HEIRS OF PICKETT
vs.
GEORGE FOSTER *et al.*

George Foster, one of the defendants herein, respectfully shows that the testimony of E. J. Delony, a competent witness, residing in the parish of East Carroll, in the State of Louisiana, is necessary & material to him on the trial of this cause.

Wherefore he prays for the issuance of a commission, after due notice to complainants, to take the answers of said witness to the annexed interrogatories; the same when so taken to be read in evidence on the hearing of this cause.

1st. Where do you reside and what is your present vocation?

2nd. In what business were you engaged prior to acquiring your present position?

3rd. Are you acquainted with George Foster, one of the defendants herein?

4th. Do you know anything of the circumstances under which said George Foster was appointed public administrator of Carroll parish? If yea, state them & if you know state at whos- request & for what purpose he accepted the office.

256 5th. Do you know anything of the claim sued on in this case?

6th. Were the notes sued on herein ever filed in the suit brought thereon by Lanier, the public adm'r, Mr. Foster's immediate predecessor in office?

7th. Please state what att'y, if any, represented Mr. Foster as public adm'r generally.

8th. If, in answer to the preceding interrogatory, you say you did, please state if you ever called on Lanier, ex-public adm'r for the notes in suit, or made any inquiries of him in relation to the same.

9th. If yea, state his replies, if you can recollect them.

10th. Did you know of any estate, either real or personal, of James C. Pickett situated in Carroll parish during the term of George Foster as public administrator of said parish?

11th. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this your examination or the subject in question
257 in this cause? If yea, set the same forth fully and at large in your answer.

C. J. & J. S. BOATNER, *Solicitors.*

The foregoing petition considered, let a commission issue as prayed for, returnable on or before June 1st, 1887, & let Chas. R. Egelly, Esqr., be appointed spe'l com'r to execute the same.

This done and signed, in office, at Monroe, La., this 20th day of April, A. D. 1887.

J. B. BEATTIE, *D'y Clerk.*

[Endorsed:] No. 110. Heirs of Pickett *vs.* Geo. Foster *et als.* Interrogatories to E. J. Delony. Filed April 20th, 1887. J. B. Beattie, d'y clerk.

257½ United States Circuit Court, Western District of Louisiana.

HEIRS OF PICKETT
vs.
GEORGE FOSTER *et als.* } No. 110.

To Judge John T. Ludeling, solicitor for complainants:

Take notice that defendants hath filed interrogatories to E. J. Delony, of East Carroll parish, La. A certified copy of said interrogatories accompanies this notice, and that you may, if you think proper, put such cross-interrogatories as are requisite and fit and file the same in this court within ten days from the service hereof.

Clerk's office, Monroe, La., April 22, 1887.

[SEAL.] J. B. BEATTIE, *D'y Clerk.*

257¾ [Endorsed:] No. 110. U. S. circuit court. Heirs of Pickett *vs.* George Foster *et als.* Notice to cross-interrogatories. Filed April 21st, 1887. J. B. Beattie, d'y cl'k.

Rec'd the within notice & certifi- copy thereof, together with certified copy of intgs., in office, at Monroe, La., on April 21st, 1887, & on same day, month, & year made service by handing certified copies to Jno. T. Ludeling, Esqr., of counsel for complainants, in his office, in the city of Monroe, La.

E. T. LAMKIN,
D'y U. S. Marshall.

258 U. S. Circuit Court, Western District of Louisiana, Holding Session at Monroe. In Equity.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et als.*

Reserving all legal objections to the competency of the answers to the interrogatories-in-chief, especially to the 9th interrogatory, as tending to elicit hearsay testamony, the complainants now propound to the witness E. J. Delony the following cross-interrogaries:

Cross-interrogatory 1st. If, in answer to the interrogatory 4th, you state anything of the cause and circumstances which led to the appointment of George Foster as public administrator, please state in detail from whom, when, and how you acquired knowledge of the facts given by you. Do you know of your own knowledge all the facts you have given in your answer to interrogatory 4th?

X Intg. 2nd. What were your personal and political relations with Governor W. B. Kellogg when he appointed George Foster public administrator? Were you on such intimate terms of friendship with Governor Kellogg as to enable you to know the causes and circumstances which operated on his mind inducing him to make said appointment? Were you present when the appointment
259 was made? Did you use your personal influence with the governor to procure said appointment? If not, how do you know the causes and circumstances which influenced the governor to appoint George Foster?

X Intg. 3rd. If, in answer to the 11th general interrogatory, you state any fact or circumstance material to the issues involved in this case, will you state how you acquired knowledge of the facts detailed by you. From whom, when, and how did you acquire knowledge of those facts? Do you know them of your own knowledge? Did you acquire knowledge of them from George Foster or any one else?

X Intg. 4th. Have you ever been written to by George Foster or any one else requesting you to give testimony in this case? If so, annex the letter or letters received by you.

X Intg. 5th. Have you ever been approached by George Foster or any one else and importuned or requested to give your evidence in this case? Have you ever discussed with George Foster or any one else the nature of this suit or the kind of evidence you might be able to give? Have you ever imparted to George Foster or any

one else the substance of the evidence you have given in your
260 examination-in-chief? If so, when, at whos- request, and to whom did you give the information?

X Intg. 6th. Was not the law firm of Montgomery & Delony (of which you were a member before going on the bench) the regular attorneys of George Foster in all suits in which he was interested in this parish?

X Intg. 7th. Do you know of your own knowledge all you have said in answer to the 6th, 8th, and 10th interrogatories-in-chief? Are your answers free from all opinions, conjectures, and hearsay testimony, and are your statements absolutely within your personal knowledge?

X Intg. 8th. What has become of B. H. Lanier, the predecessor of George Foster as public administrator? Where is he now? Where did he remove from this parish? Is he living? If so, where does he live? Do you know any reason that his whereabouts should be concealed? Has he fled from the United States on account of any crime or charge made against him by the Government? If so, when? Is it not generally understood that some years ago he fled the country to escape a criminal prosecution by the Government?

W. G. WYLY, *Solicitor.*

261 [Endorsed:] No. 110. U. S. circuit court, western district of Louisiana. Heirs of J. C. Pickett *vs.* George Foster *et als.* Cross-interrogatories to Judge E. J. Delony. Filed May 2nd, 1887. J. B. Beattie, d'y cl'k.

262 U. S. Circuit Court, Western District of La., Holding Session at Monroe. In Equity.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et als.*

The complainants propound the following interrogatories to WILLIAM G. WYLY, a competent witness, residing in the parish of East Carroll, whos- answers, when taken, will be read on the trial hereof in behalf of the complainants, The Heirs of J. C. Pickett:

1st Intg. Where do you reside and what is your occupation?

2nd Intg. Do you know the defendant George Foster and how long have you known him?

3rd Intg. Where does he reside and what is his occupation and what has been his occupation since you have known him?

4th Intg. If you say he has been engaged in business as a planter, state what plantation he has occupied and cultivated and how long.

5th Intg. If you say he has been a planter cultivating that plantation known as the Jonathan Morgan place or the "Pecan grove" plantation, state how long he has occupied and cultivated said plan-

tation and what has been the character of his possession, as well as you can judge from his conduct and administration thereof.

6th Intg. Do you own a plantation in the neighborhood
263 of the Jonathan Morgan place, and did you ever have personal knowledge as to who dominated said Jonathan Morgan plantation?

7th Intg. If you say that George Foster had charge of said plantation, state for how long and whether he seemed to act as owner or merely as a manager or agent for some other person, and state where he resides now and upon what plantation he makes his home.

8th Intg. Do you know or can you state any other matter or thing material to the issue of this case or which may be of benefit or advantage either to complainants or respondents? If so, state all you may know in reference to the matters at issue as fully and at large as if you were specially interrogated thereto.

JNO. T. LUDELING,
W. G. WYLY, *Solicitors.*

[Endorsed:] No. 110. U. S. circuit court, western district of La. Heirs of J. C. Pickett *vs.* George Foster *et als.* Interrogatories to W. G. Wyly. Filed May 2nd, 1887. J. B. Beattie, d'y cl'k.

263½ United States Circuit Court, Western District of Louisiana.

HEIRS J. C. PICKETT
vs.
GEORGE FOSTER *et als.* } No. 110.

To Mess. C. J. & J. S. Boatner, solicitors for def'ts:

Take notice that complainants hath this day filed interrogatories to W. G. Wyly, of East Carroll p'h, La.—a certified copy of said interrogatories accompanies this notice—and that you may, if you think proper, put such cross-interrogatories as are requisite and fit, and file the same in this court within ten days from the service hereof.

Clerk's office, Monroe, La., May 2nd, 1887.

[SEAL.] J. B. BEATTIE, *De'y Clerk.*

263¾ [Endorsed:] No. 110. U. S. circuit court. Heirs J. C. Pickett *vs.* Geo Foster *et als.* Notice to cross-interrogatories. Filed May 4th, 1887. J. B. Beattie, d'y clerk.

Rec'd the within notice & certified copy thereof, together — certified copy of int'g's, in office, at Monroe, La., May 2nd, 1887, & on same day, month, & year made service by handing certified copies to Chas. J. Boatner, one of the solicitors for def'ts, in his office, in the city of Monroe, La.

E. T. LAMKIN,
D'y U. S. Marshal.

264 U. S. Circuit Court, Western District of La., Holding Session at Monroe. In Equity.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et al.*

The complainants propound the following interrogatories to Jesse D. Tompkins, a competent witness, residing in the parish of East Carroll, whose answers, when taken, will be read on the trial hereof in behalf of the complainants, The Heirs of J. C. Pickett:

1st Intg. What is your age, occupation, and place of residence? If in the parish of East Carroll, state how long you have resided in said parish.

2nd Intg. Do you know the defendant George Foster, and how long have you known him?

3rd Intg. Where does he reside, and what is his occupation and has been his occupation since you have known him?

4th Intg. If you say he has been engaged in business as a planter at any time since you have known him, state what plantation he has occupied and cultivated.

5th Intg. If you say he has occupied and cultivated that plantation known as the Jonathan Morgan place or the
265 & 266 "Pecan Grove" plantation, state how long he has occupied and cultivated said plantation and what has been the character of his possession and what control has he exercise- over the place.

6th Intg. Did you ever reside in the immediate neighborhood of that plantation, and did you ever have personal observation and knowledge as to who dominated or controlled it as owner? If so, on what place did you reside? How near was it to that plantation, and during what years did you reside in the immediate neighborhood of said plantation?

7th Intg. If you say you resided in the immediate neighborhood of that plantation will you state all you know as to how that plantation was controlled and who supervised and directed its affairs as owner? And state generally all you may know about the management of said plantation since you have known George Foster.

8th Intg. If you say that George Foster has been in charge of said plantation, state whether he seemed to act in the capacity of an absolute owner or whether he seemed to manage said plantation as agent for some other person. If you say he executed acts of ownership over the property, will you mention any matters that
267 you now remember that induced you to believe or infer that he was acting as owner?

9th Intg. This suit was brought in December, 1885. Will you state whether or not the management and control of George Foster continued, down to that period, to be of the same character as it was when you first gained personal knowledge as to the character of his possession of said plantation?

10th. Do you know or can you state any other matter or thing material to the issue of this case or which may be of benefit or ad-

vantage either to the complainants or the respondents? If so, state fully and at large all you may know in reference to the subject or matters at issue as if you were specially interrogated thereto.

W. G. WYLY, *Solicitor.*

[Endorsed:] No. 110. U. S. circuit court, western district of Louisiana. Heirs of J. C. Pickett *vs.* George Foster *et al.* Interrogatories to J. D. Tompkins. Filed May 2nd, 1887. J. B. Beattie, d'y cl'k.

267½ United States Circuit Court, Western District of Louisiana.

HEIRS J. C. PICKETT
vs.
GEO. FOSTER *et als.* } No. 110.

To Mess. C. J. & J. S. Boatner, solicitors for def'ts:

Take notice that complainants hath filed interrogatories to Jesse D. Tompkins, of East Carroll parish, La.—a certified copy of said interrogatories accompanies this notice—and that you may, if you think proper, put such cross-interrogatories as are requisite and fit, and file the same in this court within ten days from the service hereof.

Clerk's office, Monroe, La., May 3rd, 1887.

[SEAL.] J. B. BEATTIE, *D'y Clerk.*

267¾ [Endorsed:] No. 110. U. S. circuit court. Heirs J. C. Pickett *vs.* George Foster *et als.* Notice to cross-interrogatories. Filed May 4th, 1887. J. B. Beattie, d'y cl'k.

Received the within notice & certified copy thereof, together with certified copy of intgs., in office, at Monroe, La., May 4th, 1887, & on same day, month, & year made service by handing certified coppies to John S. Boatner, one of the solicitors for def'ts, in his office, at Monroe, La.

E. T. LAMKIN,
D'y U. S. Marshal.

268 *Extract of Minutes.*

MONDAY, *July 18th,* 1887.

Court met pursuant to adjournment.

Present: His Hon. Aleck Boarman, dist. judge, presiding.

HEIRS OF J. C. PICKETT
vs.
GEO. FOSTER *et als.* } No. 110.

This cause, as per assignment, came on to be heard.

Motion to suppress testimony filed on behalf of complainants and case continued until to-morrow, Tuesday, July 19th, 1887.

269 *Complainants' Motion to Suppress Testimony.*

U. S. Circuit Court, 5th Circuit, Western Dist. of Louisiana.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et als.*

The plaintiffs move to suppress the following evidence offered by defendants, to wit:

1st. Abstract of title or opinion of D. C. Jenkins, att'y, on grounds that it is —, & the — statement or opinion of a third party, whom plaintiffs have had no opportunity to examine or cross-question.

2nd. That part of 10th answer of George Foster which purports to give the declarations of Goodrich & Scanlan on the ground that this is hearsay.

3rd. That part of answer 15 of Geo. Foster which purports to state that counsel had told him & his own opinions on the grounds that the first is hearsay & the second is not evidence.

4th. That part of Geo. Foster's answer to 16th intg. in which he states that Lanier told him, on the grounds that it is hearsay.

5th. The answer of Geo. Foster to the 23d, 24*d*, & 25th interrogatories of Geo. Foster on the ground that he is prohibited by law to testify in favor of his wife.

270 6th. The third and fourth answers of Mrs. Foster on the ground that the law prohibits a wife from testifying in favor of her husband.

7th. That part of E. J. Delony's testimony in answer 6th wherein he states what Lanier told him, on the ground that it is hearsay; also that part of Delony's answer to 7th interrogatory in which he states what he says Lanier told him, on the ground that it is hearsay; also answer to the 8th interrogatory on the grounds that it is hearsay; also that part of answer 11th in which he states his opinions.

8th. That part of answers to intg. 21st which refers to letters & other papers annexed to answer, on the grounds that said letters & documents are — unsworn statements of third persons whom plaintiffs have not had an opportunity to cross-examine.

JNO. T. LUDELING, *Solicitor.*

[Endorsed:] No. 110. U. S. circuit court. Heirs of J. C. Pickett *vs.* George Foster *et als.* Motion to suppress evidence. Filed July 18, 18-7. J. B. Beattie, d'y clerk.

271 *Extract of Minutes.*

TUESDAY, *July 19th*, 1887.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

HEIRS J. C. PICKETT
vs.
GEO. FOSTER *et als.* } No. 110.

This cause came on to be heard again.

On motion of Messrs. C. J. & J. S. Boatner, solicitors for Mrs. Mary J. Foster, def't, it was ordered that an amended demurrer be filed.

After hearing the evidence in part the cause was continued until to-morrow, Wednesday, July 20th, 1887.

Motion to suppress filed on behalf of defendants.

272 1 X.

Defendants' Motion to Suppress.

HEIRS OF PICKETT
vs.
GEO. FOSTER *et als.*

Defendants Geo. Foster & Mary J. Foster move to suppress the following testimony offered by complainants, viz., Mrs. Mary J. Foster moves as follows:

1st. They move to suppress all testimony offered by complainants to show any rights or interest in the alleged deed of trust or notes which it is claimed are thereby secured, on the ground that it is solemnly alleged in the bill that said deed of trust & notes are barred and extinguished by prescription and pre-emption.

2nd. Geo. Foster moves to suppress all testimony taken by complainants tending to show malfeasance or non-fe-sance on the part of George Foster, as public administrator, on the ground that complainants allege the same to be in the alleged fact that said Foster, public adm'r, failed to institute proceedings to collect said notes, to enforce said deed of trust, and at the same time alleged that said notes & deed of trust are valid & subsisting obligations, & pray that they be so recognized.

3rd. They both move to suppress the deed of trust & the
273 copies thereof offered in evidence on the ground that, according to the recitals therein contained, all parties thereto being citizens of other States, that the State of Tennessee, for which said commissioner was appointed a La. commissioner, had no capacity to authenticate an agreement between them, and the same is therefore a private act, the signatures to which have not been proved.

The notes sued on are objected to on the ground that the signa-

tures to the same are not proved, & on the further ground that the consideration of the same is neither alleged or proved.

5th. Defendants move to suppress the testimony of J. D. Pickett & Theodore J. Pickett and William H. Pickett, taken by commission, on the ground that said testimony is hearsay and secondary.

6th. Defendants move to suppress the testimony of J. W. Montgomery, taken by commission, on the ground that such testimony is secondary and not the best evidence, and defendants move
274 to suppress testimony of Montgomery on the grounds that he cannot be permitted to testify as to facts communicated to him by his cliants, and that the same is merely the opinion of said witness, and on the further ground that so far as said testimony is an attempt to show an acknowledgement of indebtedness on the part of the makers of the notes sued on, such acknowledgment cannot be shown by parol evidence, prescription having accrued, and on the further ground that the statements and conversations and admissions of the makers of said notes are not admissible as against these defendants, and that the testimony is not covered by the pleadings.

7th. Defendants move to suppress the testimony of W. G. Wyly, taken by commission, on the ground that title to real estate cannot be shown by parol, and on the further ground that his testimony consists of inferences and opinions which are not admissable.

8th. Defendants move to suppress the testimony of J. D. Tompkins, takin by commission, on the ground that title to real
275 estate cannot be shown by parol, and that his testimony consists of inferences, opinions, and are not admissible in evidence.

Endorsed: No. 110. U. S. circuit court, 5th circuit, western district La. Heirs J. C. Pickett *vs.* George Foster *et als.* Defendants' motion to suppress. Filed July 19, 1887. J. B. Beattie, d'y clerk.

276 HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et als.*

Mrs. M. J. Foster, one of the defendants herein, with leave of the court amends the demurrer contained in her answer in this cause, & for further cause of demurrer saith—

That there is no law of the State of Louisiana which grants or creates a mortgage, legal or otherwise, upon the property of administrators or public administrators in favor of the creditors or heirs of the estate they represent; wherefore she demurs to so much of plaintiffs' bill of complaint as asserts & prays for the enforcement of a legal mortgage upon her property resulting from the recording of the bond of Geo. Foster, as public administrator; & prays as in her original demurrer.

C. J. & J. S. BOATNER, *Solicitors.*

[Endorsed :] No. 110. Heirs of J. C. Pickett *vs.* Geo. Foster *et als.* Amended demurrer by Mrs. M. J. Foster. Filed July 19th, 1887. J. B. Beattie, d'y cl'k.

277 *Complainants' Note of Evidence.*

United States Circuit Court, Western District of Louisiana.

HEIRS OF J. C. PICKETT *vs.* GEO. FOSTER *et al.* } No. 110. In Equity.

Note of evidence of plaintiffs.

1st. Act of mortgage or deed of trust from Mrs. Ricketts & Mrs. Bell, dated Jan'y, 1866, with certificates of the clerk of East Carroll parish of the registry of said act & of the reinscription thereof on the 4th of December, 1885.

2nd. The three notes sued upon, with the paraph of the notary — commissioner on them to identify them with the act of mortgage.

3rd. Record of the suit of Lanier, public adm'r, *vs.* Ezra Wheeler & Co., Mrs. Green, Mrs. Scanlon, & others, including the petition & citations to Mrs. Scanlon, Mrs. Green, & Ezera Wheeler & Co.; supplemental petition making Geo. Foster a party; citation to Geo. Foster, and the sheriff's returns on the several citations aforesaid; also exception of defendants, minutes of the court, motion of
278 defendants to dismiss suit for failing to appear when called, & judgment dismissing the suit, dated 4th Dec, 1875, with certificate of the clerk; all marked "E."

4th. The bond & oath of office of Geo. Foster as public administrator.

5th. The bond of Lanier as public administrator & certificate of secretary of state that the records of his office show the oath was filed.

6th. Certificates of secretary of state of date of their appointments as public administrators.

7th. Records in succession of Adam Hart & Martin Lee, in Carroll parish, to show that B. H. Lanier was acting as public adm'r in that parish.

8th. Record of suit of Mary J. Gwyn *vs.* Geo. Foster, together with the evidence therein, the *fi. fa.* & sheriff's returns thereon & the clerk's certificate.

9th. Transcript of proceedings in suit of F. M. Goodrich, tutor, *vs.* N. J. Morgan, with clerk's certificate.

10th. Transcript of proceedings in suit of F. M. Goodrich, tutor, *vs.* A. A. Morgan, & certificate of the clerk.

279 11th. Sheriff's deed to J. H. Green, dated 5th Sept., 1868, with certificate of clerk.

12th. Sheriff's deed to F. M. Goodrich, dated 5th Sept., 1868, with certificate of clerk.

13th. Certified copy of deed from F. M. Goodrich to A. A. Ricketts, dated 18 Dec., 1868.

14th. Deed from sheriff to F. M. Goodrich, dated 19th Dec., 1869.

15th. Deed from F. M. Goodrich to J. H. Green, dated 23d May, 1870.

16th. Deed from Mrs. Scanlan (*née* A. A. Morgan-Ricketts) to Geo. Foster, dated 5th Feb. 1873.

17th. Marshall's deed to Ezra Wheeler & Co., dated 2nd August, 1873.

18th. Tax title from R. K. Anderson to W. A. Gwyn, dated 10 Dec., 1874, for taxes of Geo. Foster.

19th. Deed from auditor to W. A. Gwyn, dated 15th July, 1875.

20th. Deed from W. A. Gwyn to George Foster, dated 16th Dec., 1881.

280 21st. Deed from Ezra Wheeler & Co. or members thereof to Geo. Foster, dated 24th November, 1881.

22nd. Tax title from R. K. Anderson to W. A. Gwyn, dated 10 Dec., 1874, for taxes of J. H. Green.

23rd. Testimony of J. D. Pickett, Theodore J. Pickett, & William H. Pickett, taken by commission at Frankfort, Ky., & filed in clerk's office on 6th October, 1886, with the documents annexed thereto.

24th. Testimony of J. W. Montgomery, taken by commission & filed in the clerk's office on the 6th June, 1887.

25th. Testimony of W. G. Wyly, taken by commission & filed in the clerk's office on 1st June, 1887.

26th. Testimony of J. D. Tompkins, taken by commission & filed in the clerk's office on the 30th June, 1887.

27th. Copy of judgment in F. M. Goodrich, tutor, *vs.* N. J. Bell (Morgan) & certificate of clerk of non-registry of the judgment.

28th. Copy of judgment in F. M. Goodrich, tutor, *vs.* A. A.
281 Ricketts (Morgan), with certificate of clerk of non-registry of same.

29th. Copy of act of mortgage or deed of trust, with certificate or recordation & reinscription in recorder's office of Carroll parish.

30th. Copy of bond of Foster, public administrator, with certificate of recorder of registration of same in Carroll parish.

JOHN T. LUDELING,
Solicitor for Plaintiffs.

Endorsed: No. 110. Heirs of J. C. Pickett *vs.* George Foster *et als.* Note of evidence of plaintiffs. Filed July 19th, 1887. J. B. Beattie, d'y cl'k.

282 1 A.

Act of Mortgage.

UNITED STATES OF AMERICA.

STATE OF TENNESSEE, } *ss:*
Shelby County, City of Memphis, }

Be it known that this sixteenth day of January, in the year of our Lord one thousand eight hundred and sixty-six, before me, a com-

missioner of the State of Louisiana in and for the city of Memphis, in the county and State first above named, duly commissioned and qualified and residing in said city of Memphis, personally appeared Mistress Agnes M. Ricketts and Mistress Narcissa J. Bell, the former widow of James P. Ricketts, deceased, late of Woodford county, State of Kentucky, and the latter widow of Clarence W. Bell, deceased, late of Lexington, Fayette county and State of Kentucky, who declared that for the consideration hereinafter named and expressed they do by these presents grant, bargain, sell, convey, and set over with all legal warranties unto Richard C. Ricketts, Senior, minister, of Midway, Kentucky, as trustee for the uses and purposes following and described herein, and they in fact do hereby convey to said Richard C. Ricketts, Senior, as such trustee—

283 The undivided two-thirds (⅔) interest of the said Mistress Agness M. Ricketts and Mistress Narcissa J. Bell in and to the Jonathan Morgan plantation (so called), in parish of Carroll and State of Louisiana, the same being a tract of land or plantation of about eighteen hundred acres and the only one in which the said grantors have any interest in said parish of Carroll, Louisiana, the said two-thirds interest being all the interest which the said parties have under and by virtue of the will of the said Jonathan Morgan, later of said Carroll parish; to have and to hold the said two-thirds of same plantation and its appurtenances to the said Richard C. Ricketts, Sen'r, his heirs and assigns forever, subject to the following trusts:

Whereas the said grantors are indebted to James C. Pickett, gentleman, of Washington, District of Columbia, in the sum of eighteen thousand dollars ($18,000), lawful money of the United States, evidenced by the three several promissory notes of the said grantors given to the said James C. Pickett and payable to his order, described as follows, *sct:*

One for five thousand five hundred dollars ($5,500), dated Memphis, Tenn., January 1st, A. D. 1866, and due one year after date.

284 One for six thousand dollars, same date, and due in two years after date ($6,000); and, lastly—

One for six thousand five hundred dollars, due in three years after date of — ($6,500).

And whereas the said grantors are desirous of securing said debts to the said James C. Pickett and his assigns, and, in consideration of said debts and of one dollar to said grantors in hand paid in my presence as commissioner aforesaid, have agreed to make this conveyance to a proper person as trustee; and whereas the said Richard C. Ricketts, Senior, of Midway, is such person and has signified his consent to be such trustee, which will be more fully evidenced by his signature hereto affixed:

Now, therefore, the condition on which the said grant is made and on and for which this trust is created is that the said trustee shall hold the said property in trust for the payment of the said notes, in whosever hands they may come, and in case they shall all be paid

at maturity of the same this deed shall be null and void and
285 of no effect in law; otherwise it shall be and remain in full force and vigor and the said trustee shall have the right to request of the holder or holders of any of the dishonored paper above named to take possession of the estate hereby conveyed and foreclose this deed of trust and the interests of the said grantors in the property, and till default in the payment of said notes or either or any part of them the said grantors shall have the right to the possession of the said estate hereby conveyed, and on full payment of the said notes it is understood and agreed that the said trustee shall make such reconveyance of said estate hereby conveyed to said grantors as may be necessary under the laws of Louisiana to extinguish the lien of this instrument, and the said James C. Pickett also signs this act or deed of sale in ratification of the agreements and trusts herein created, he acknowledging the same in the city of Washington, Dist. of Columbia; and the said notes above named, executed by the said grantors, are at date hereof and in my presence delivered to said James C. Pickett, he signing
286 this instrument in token of their receipt, and the said notes marked *ne variatur* and countersigned by me, commissioner aforesaid, for the purpose of identification, and this instrument under the trusts aforesaid is this day delivered to the said Richard C. Ricketts, Sen'r, trustee.

This done and passed, in my office, in the city of Memphis aforesaid, in the presence of Thomas E. S. Cockrell and Moses J. M. Mason, white, witnesses of lawful age and domiciliated in said city, who hereunto signed their names, together with the said parties, at present domiciliated in the same place, and me, the said commissioner, who sign this act or deed and affix hereto my seal as such commissioner this sixteenth day of January, A. D. 1866.

[SEAL.] AGNESS M. RICKETTS.
NARCISSA J. BBLL.

THOS. E. COCKRELL, *Witness.*
MOSES J. M. MASON, *Witness.*

J. W. WESTCOTT,
Commissioner for Louisiana in Tennessee, at Memphis.

287 I, Richard C. Ricketts, of Midway, Woodford county, Kentucky, do hereby accept the trust named in the foregoing instrument of writing, January 31st, 1866.

RICHARD C. RICKETTS, SR.

Witness-:
BEN. S. DRAKE.
JAS. F. DRAKE.

STATE OF KENTUCKY, } *ss:*
Fayette County, }

Be it remembered that on this the 31st of January, 1866, before me, Benj. F. Graves, resident of the city of Lexington, personally appeared Richard C. Ricketts, minister, to me known to be the in-

dividual who signed the above and accepted the within trust as his act and deed for the use and purpose therein mentioned.

In witness whereof I have hereunto signed my name and affixed my official seal the day and date above written.

[U. S. internal revenue stamp, 5 cts.]

[SEAL.] BENJAMIN F. GRAVES,
Commissioner for Louisiana in Kentucky.

288 I, James C. Pickett, of Washington city and District of Columbia, do hereby accept and ratify all the provisions of the foregoing and annexed instruments of writing, constituting Richard C. Ricketts trustee for certain purposes therein expressed.

Witness my hand and seal this 10th day of February, 1866.

JAMES C. PICKETT. [SEAL.]

Witnesses:
JOHN D. BLOVE.
ZACH. B. BROOKE.
JOHN S. HOLLINGSHEAD.

DISTRICT OF COLUMBIA, *City and County of Washington,* } *ss:*

Personally appeared before me, a notary public in and for said county and District, James C. Pickett, who acknowledged that he voluntarily signed the foregoing instrument for the purpose therein mentioned; and I certify also that John D. Blove and Zach. B. Brooke, witnesses to the signature of said Pickett, are to all intents legal and sufficient persons.

In witness whereof I have hereunto signed my name [SEAL.] and affixed my official seal the day and date above written.

JOHN S. HOLLINGSHEAD,
Notary Public.

289 DISTRICT OF COLUMBIA, *To wit:*

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, hereby certify that John H. Hollingshead, whose genuine signature is subscribed to the foregoing certificate of acknowledgment, was, at the time of signing and attesting the same, a notary public for said District, duly commissioned and qualified, authorized to take acknowledgements and to administer oaths, and that his attestation thereto is according to law.

[SEAL.] Witness my hand and the seal of said court this 10th day of February, 1866.

[U. S. internal revenue stamp, 5 cts.]

R. J. MEIGS, *Clerk.*

STATE OF LOUISIANA, *Parish of Carroll.* }

Before me, David L. Morgan, deputy recorder, duly appointed and sworn in and for the parish of Carroll, State of Louisiana, personally

came and appeared Mrs. Agnes M. Ricketts and Mrs. Narcissa Bell, who, being duly sworn, declared and said that the signatures of these names attached to the within were written by them in person on the day and date therein set forth, and that the same are their own genuine signatures.

290 Sworn to and subscribed before me on this the 6th day of March, A. D. 1866.

[SEAL.]

DAVID L. MORGAN,
Deputy Recorder.
MRS. AGNES M. RICKETTS.
MRS. NARCISSA J. BELL.

STATE OF LOUISIANA,
Parish of East Carroll.

I, William Rous, clerk and *ex officio* recorder in and for the parish of East Carroll (formerly the parish of Carroll), duly commissioned and qualified, do hereby certify that the foregoing deed of trust was recorded in the records of this office on the 12th of March, 1866, in Mortgage Book "H," folios 352, 353; and I do further certify that the same was duly reinscribed by me on the 4th of November, 1885, in Mortgage Book V, folios 781, 782, 783, and 784, of the recorder's office of this parish.

[SEAL.] Witness my hand and seal of office this the 23rd day of November, 1885.

WM. ROUS,
Clerk and ex Officio Recorder.

291 [Endorsed:] No. 110. U. S. circuit court, western district La. Heirs J. C. Pickett *vs.* George Foster *et als.* Filed in evidence on behalf of complainants July 19th, 1887. J. B. Beattie, d'y clerk.

292 (1 B.)

Oath of Office of Geo. Foster, as Pub. Adm'r.

Oath of office.

I, George Foster, do solemnly swear (or affirm) that I accept the civil and political equality of all men and agree not to attempt to deprive any person or persons on account of race, color, or previous condition of any political or civil right, privilage, or immunity enjoyed by any other class of men; that I will support the Constitution and laws of the United States and the constitution and laws of this State, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as public administrator in and for the parish of Carroll, according to the best of my ability and understanding, so help me God.

Sworn to and subscribed before me this 29 day of April, A. D. 1875.

P. J. DESLONDE.

OFFICE OF THE SECRETARY OF STATE,
STATE OF LOUISIANA.

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify the above to be a true copy of the original on file and deposited in this office.

Given under my signature and the seal of the State of [SEAL.] Louisiana, at Baton Rouge, this 19th day of April, A. D. 1866.

OSCAR ARROYO,
Secretary of State.

293 [Endorsed:] 110. Copy. Oath of office of George Foster, as public administrator of the parish of Carroll. Filed April 29, 1875. Filed in evidence on behalf of complainants July 19th, 1887. J. B. Beattie, d'y cl'k.

294 (2 B.)

STATE OF LOUISIANA, }
Parish of Carroll. }

Bond of Geo. Foster, as Pub. Adm'r.

Know all men by these presents that we, George Foster, as principal, and Wm. A. Gwyn and Thomas O. Dyer, as securities, are held and firmly bound unto his excellency Wm. P. Kellogg, governor of Louisiana, or his successor in office in the following sums, to wit: George Foster, as principal, in the full sum of ten thousand dollars, and Wm. A. Gwyn for five thousand dollars, and Thomas O. Dyer for five thousand dollars, current money of the United States of America, which we promise to pay to him or to his successors in office; for the faithful performance of which we bind ourselves firmly by these presents, and each of us, our and each of our heirs, executors, and administrators, for the amount of the bond thus entered into by each of us individually. The condition of this obligation is such that if the above-bonded George Foster shall well and faithfully discharge and perform all the duties incumbent upon him as public administrator of Carroll parish, La., then in such case the above obligation to be null and void, or else to remain in force and virtue.

295 In faith whereof we have signed these presents at New Orleans this 29th day of April, 1875.

GEO. FOSTER. [SEAL.]
WM. A. GWYN. [SEAL.]
T. O. DYER. [SEAL.]

In presence of—
OSCAR F. HUMAKER.
JAMES B. WANDS.

Personally came and appeared before me, the undersigned authority, Wm. A. Gwyn, T. O. Dyer, who, being by me first duly sworn doth each for himself depose and say that he signed the within bond

and that he is worth the sum of five thousand dollars over and above all his liabilities in personal property situated in the parish of Orleans.

WM. A. GWYN.
T. O. DYER.

Sworn to and subscribed before me this 29th April, 1875.
WM. H. HOLMES,
Second Justice of the Peace, Parish Orleans, La.

Approved April 29th, 1875.

W. L. EVANS,
Judge 1st M. P. Court.

Approved, N. Orleans, La., April 29th, 1875.
I. M. CONWAY,
D'y Recorder of Mortgages.

Approved April 29, 1875.

W. P. KELLOGG,
Governor of La.

296 STATE OF LOUISIANA, }
Parish of Orleans. }

I, the undersigned, d'y recorder of mortgages in and for the parish of Orleans, State of Louisiana, do hereby certify that the within bond has been this day duly recorded in my office according to law, and that a duplicate copy of the same is on file in this office, recorded in Book of Bonds No. 102, folio 263, and in Book of Mortgages No. 133, fo. 693.
New Orleans, La., April 29th, 1875.
[SEAL.]

J. M. CONWAY,
D'y Recorder.

STATE OF LOUISIANA, }
Parish of East Carroll. }

I, Wm. Rous, clerk of the 8th district court and *ex officio* recorder in and for the parish of East Carroll and State of Louisiana, do hereby certify that above and foregoing is a full, true, & correct copy of the original bond of Geo. Foster as public administrator of Carroll parish, La., together with the various endorsements thereon, now on file in this office, and that the same is duly of record in this office under date of May 6th, 1875, in Mortgage Book N, folios 43 & 44, and in Bond Book B, folios 84 & 85.

[SEAL.] Witness my hand and seal of office this 15th day of July, A. D. 1887.

WM. ROUS,
Cl'k & ex Officio Recorder.

297 [Endorsed:] No. 110. George Foster to Wm. P. Kellogg. Bond as public administrator. Filed in evidence on behalf of complainants July 19th, 1887. J. B. Beattie, d'y cl'k.

3 B.

OFFICE OF THE SECRETARY OF STATE,
STATE OF LOUISIANA.

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify the above and foregoing to be a true copy of the original on file and deposited in this office. Witness my signature and the seal of the State of Louisiana, at the city of Baton Rouge, this 19th day of April, A. D. 1886.

[SEAL.] OSCAR ARROYO,
Secretary of State.

[Endorsed:] Official bond of George Foster, public administrator of the parish of Carroll. Filed May 1st, 1875. Filed in evidence on behalf of complainants July 19th, 1887. J. B. Beattie, d'y clerk.

298 (4 B.)

Certificate of Secretary of State.

STATE OF LOUISIANA:

OFFICE OF THE SECRETARY OF STATE.

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that, according to the records of this office, George Foster was on the 29th day of April, 1875, appointed and commissioned by the gove-nor of this State as public administrator of the parish of Carroll, in this State, and that on the 29 day of April, 1875, he has filed in this office his oath of office as such public administrator of said parish.

Given under my signature and the seal of the State of
[SEAL.] Louisiana, at the city of Baton Rouge, this 19th day of April, A. D. 1886.

OSCAR ARROYO,
Secretary of State.

[Endorsed:] 110. Filed in evidence on behalf of complainants July 19th, 1887. J. B. Beattie, d'y clerk.

299 1 C.

Bond of B. H. Lanier, Pub. Adm'r.

STATE OF LOUISIANA, }
Parish of Carroll. }

Know all men by these presents that we, Benjamin H. Lanier, as principal, and Andrew J. Parlin, William B. Dickey, and Robert J. Louden, all residents of the parish and State aforesaid, as securities, are held and firmly bound unto Henry C. Warmoth, gove-nor of the State of Louisiana, or his successors in office, in the following sums, to wit, Benjamin H. Lanier, as principal, in the full sum of ten thousand dollars, and the said Andrew J. Parlin, William B.

Dickey, and Robert J. Loudon, sureties, in the sum of ten thousand three hundred and thirty-three $\frac{33}{100}$ dollars each, current money of the United States of America, which we promise to pay to him or his successors in office; for the faithful performance of which we bind ourselves firmly by these presents and each of us, our and each of our heirs, executors, and administrators, for the amount of the bond thus entered into by each of us individually.

The condition of this obligation is such that if the above-bound Benjamin H. Lanier shall well and faithfully perform and discharge all the duties incumbent upon him as public administrator for the parish of Carroll, La., then in such case the above obligation to be null and void, or else to remain in full force and virtue.

In faith whereof we have signed these presents, at Provi-
300 dence, in said parish and State, on this the 6th day of September, A. D. 1871, in presence of the subscribing witnesses.

(Signed) B. H. LANIER.
" W. B. DICKEY.
" A. J. PARLIN.
" R. J. LOUDON.

Attest: CHAS. M. PILCHER.
S. D. OLIVER.

Approved:
H. C. WARMOTH, *Gov. of La.*

OFFICE OF THE SECRETARY OF STATE,
STATE OF LOUISIANA.

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify the above and foregoing to be a true copy of the original on file and deposited in this office.

Witness my signature and the seal of the State of Louisiana, at Baton Rouge, this 19th day of April, A. D. 1886.

[SEAL.] OSCAR ARROYO,
Secretary of State.

[Endorsed:] No. 110. Official bond of Benjaman H. Lanier, public administrator of the parish of Carroll. Filed in evidence on behalf of complainants July 19th, 1887. J. B. Beattie, d'y clerk.

301 2 C.

STATE OF LOUISIANA:

OFFICE OF THE SECRETARY OF STATE.

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that, according to the records of this office, Benjaman H. Lanier was, on the 30th day of August, 1871, appointed by the gove-nor of this State as public administrator of the parish of Carroll, in this State; that on the 16th day of September, 1871, he has filed in this office his oath of office as such public administrator, and the bond required of him by law for the faithful performance of his duties as public administrator of said parish.

Given under my signature and the seal of the State of
[SEAL.] Louisiana, at the city of Baton Rouge, this 19th day of April, A. D. 1886.

OSCAR ARROYO,
Secretary of State.

[Endorsed:] 110. Filed in evidence on behalf of complainants July 19th, 1887. J. B. Beattie, d'y clerk.

302 1 E.

Record in the Suc. of Adam Hurt.

To the honorable judge of the parish court for the parish of Carroll, State of Louisiana:

The petition of William Allcott, a resident of your said parish, respectfully represents that Adam Hurt, late a resident of your said parish, departed this life on or about the 19th day of August, 1874, intestate and leaving certain personal property in this parish; that his estate owes some debts and it is necessary that an administrator should be appointed in order to settle up said estate and pay its debts; that petitioner is creditor of the estate and has other interests therein which entitle him to the administration, besides being an intimate friend of the deceased.

Wherefore he prays that a commission issue to M. A. Sweet, recorder & *ex officio* not. public, to take an inventory of the estate; that after ten days' notice that petitioner be appointed administrator on complying with the law.

ROBERTS & NEWMAN, *Att'ys.*

Let the application of William Allcott for administration of the estate of Adam Hurt, dec'd, be advertised ten days in the official journal, and if no opposition be made after ten days' publica-
303 tion of said notice let him be appointed as prayed for on his giving bond according to law.

Done, read, and signed, at chambers, this 27th day of August, 1874.

C. E. MOSS, JR.,
Parish Judge.

Endorsed as follows: Succession of Adam Hurt. Petition of Wm. Allcott for administration. Filed Aug. 27, 1884. T. I. Galbreth, d'y clerk.

To the hon. judge of the parish court in and for the parish of Carroll, State of Louisiana:

The petition of opposition of Harriet Hurt, of your said parish, with respect shows that she is the surviving spouse of her late husband, Adam Hurt, deceased, and entitled to the administration of his succession; shows that William Allcott, who has applied to be appointed administrator of said succession, is not a creditor of same,

but was a partner of her late husband and is not entitled to administer, and, even if he was, your petitioner is entitled by preference.

Wherefore she prays that the application of said Wm. Allcott be rejected and she be appointed administratrix of said succession of her late husband, Hurt, upon complying with the requirements of the law.

And for general relief.

MONTGOMERY & DELONY.

Endorsed as follows:

99. Succession Adam Hurt. Opposition of Harriet Hurt. Filed Sept. 10th, 1874. T. I. Galbreth.

79 STATE OF LOUISIANA, }
Parish of Carroll. }

Be it known & remembered that in pursuance of an order to me issued by the honorable probate court in and for the parish of Carroll and State of Louisiana and of a commission issued by Thomas I. Galbreth, d'y clerk of said court, and to me directed, authorizing and requiring me to take an inventory and cause an appraisement to be made of all the property, effects, rights, & credits belonging to the succession of the late Adam Hurt, deceased, which may be found in our said parish, &c.—

I, Marion A. Sweet, recorder in and for said parish and State, proceeded to execute said order by appointing Nelson Harris
305 and Charles Hicks to act as appraisers, to whom I administer the following oath, to wit:

We do each of us solemnly swear that we will well and truly apprais- and the true cash value place upon all the property, effects, rights, and credits belonging to the succession of the late Adam Hurt, deceased, which may be submitted to us for our decision, to the best of our ability and understanding, so help us God.

CHARLES HICKS.
his
NELSON x HARRIS.
mark.

Sworn to & subscribed before me this 11th day of September, A. D. 1874.

M. A. SWEET, *Recorder.*

We then proceeded to make the following inventory and appraisement:

Item 1st, stock:

(1)	one black mare mule, valued at	$100 00
(1)	" mouse-col'd mare mule, valued at	100 00
(1)	" dark-bay mare, " "	75 00
	Total appraisement of stock	$275 00

Item (2), implements:

(2) two plows, valued at	4 00
(1) one sweep, " "	1 00
(1) two-horse wagon, valued at	50 00
(2) two common hoes, " "	50
(1) one axe, " "	25
(2) two sets of gears	1 50
Total implements	$57 25

306 Item 3rd. Cotton in the field on Tyrone plantation, estimated at two bales when picked and ginned, valued at $50 00

Recapitulation.

Item 1st. Stock, appraised at	$275 00
" 2nd. Implements, appraised at	57 25
3rd. Cotton	50 00
Total appraisement	$382 25

This done, inventoried, and appraised at the town of Providence, in said parish and State, without turning aside to other business, in presence of Sanders D. Oliver and James S. Milliken, lawful witnesses residing in said parish and State, who sign hereto with said appraisers and me, recorder, on this the 11th day of September, A. D. 1874.

CHARLES HICKS.
his
NELSON x HARRIS.
mark.

Attest:
S. D. OLIVER.
J. S. MILLIKEN.

[SEAL.] M. A. SWEET, *Recorder.*

Endorsed: Inventory of succession. Adam Hurt. Filed Sept. 11th, 1874. T. I. Galbreth, d'y clerk.

307 To the hon. parish judge for the parish of Carroll, State of Louisiana:

The petition of Benjamin H. Lanier, public administrator for said parish, respectfully represents that the estate of Adam Hurt, dec'd, is without an administrator and owes debt; that it needs an administrator; that the administration of said estate is now in contest in your said court; that by reason of the said contest for administration between Wm. Allcott and Mrs. Hurt petitioner is entitled to the administration.

Wherefore he prays for letters of administration of said estate of Adam Hurt.

For costs and general relief.

ROBERTS AND NEWMAN, *Att'ys.*

Let B. H. Lanier, the public administrator, be appointed administrator of the estate of Adam Hurt as prayed for, and on his qualifying by oath let letters of administration issue to him.

Done, read, and signed, at chambers, this 12th day of September, A. D. 1874.

C. E. MOSS, JR.,
Parish Judge.

308 Endorsed as follows:

Parish court. Succession of Adam Hurt. Appointment of B. H. Lanier. Filed Sept. 14th, 1874. T. I. Galbreth, d'y clerk.

STATE OF LOUISIANA, }
Parish of Carroll. }

Parish Court.

I, B. H. Lanier, do solemnly swear that I will faithfully perform and discharge the duties incumbent on me as administrator of the succession of the late Adam Hurt, deceased, according to the best of my ability and understanding, so help me God.

Sworn to & subscribed before me this 22nd day of September, A. D. 1874.

[SEAL.] T. I. GALBRETH, *D'y Clerk.*

Endorsed: Succession of Adam Hurt. Oath of administrator. Filed Sept. 22nd, 1874. Thos. I. Galbreth, d'y clerk.

309 STATE OF LOUISIANA, }
Parish of Carroll. }

Parish Court.

Be it remembered that whereas B. H. Lanier, public adm'r, has been appointed administrator of the succession of the late Adam Hurt, deceased, and, having given bond and security and taken the oath required by law, is therefore fully authorized and empowered to perform and discharge the duties of said appointment.

Witness the Hon. C. E. Moss, judge of said court, [SEAL.] and the seal of said court this the 22nd day of Sept., A. D. 1874.

T. I. GALBRETH, *D'y Clerk.*

Endorsed: Succession of Adam Hurt. Letters of admin'n. Filed Sept. 22, '74. T. I. Galbreth, d'y clerk.

To the hon. judge of the parish court for the parish of Carroll, State of Louisiana:

The petition of Benjaman H. Lanier, administrator of the estate of Adam Hurt, respectfully represents that the said estate ow-s some debts which should be settled, besides the expense incurred in ad-

ministering it; that the property of said estate is all movable
310 and likely to perish or deteriorate in value by use and should be sold; that he desires to settle up the affairs of said estate as early as possible.

Wherefore he prays the court for an order to sell all the movable property and effects of said estate according to law in the town of Providence.

ROBERTS & NEWMAN, *Att'ys.*

Let a writ issue to B. H. Lanier, adm'r of the estate of Adam Hurt, dec'd, directing to advertise and sell according to law in the town of Providence all the movable property and effects of said estate.

Done, read, and signed, at chambers, October 28th, 1874.

C. E. MOSS, JR.,
Parish Judge.

(Endorsed :) Succession of Adam Hurt. Petition & order for sale. Filed October 28th, 1874. T. I. Galbreth, d'y clerk.

311 Succession of ADAM HURT.

This case being taken up for trial upon opposition of Harriet Hurt, the law and evidence being in favor of opponent, it is ordered, adjudged, and decreed that the opposition of Hariet Hurt be sustained and she be, and is hereby, appointed administratrix of the succession of her late husband, Adam Hurt, deceased, upon giving bond and taking the oath according to law.

Read & signed in open court this 18th day of March, A. D. 1875.

C. E. MOSS, JR.,
Parish Judge.

Extracts from Minutes of Court.

TUESDAY, *October 13th*, 1874.

Court met pursuant to adjournment.

99. Succession of ADAM HURT.

Fixed for Wednesday next.

WEDNESDAY, *October 14th*, 1874.

Court met pursuant to adjournment.

99. Succession of ADAM HURT.

Fixed for Monday, 19th inst., by consent.

312 FRIDAY, *November 13th, A. D.* 1874.

Court met pursuant to adjournment.

99. Succession of ADAM HURT.

Fixed for Thursday, 19th, by consent.

MONDAY, *March 15th, A. D.* 1875.

Court met pursuant to adjournment.

99. Succession of ADAM HURT.

Time granted applicant until to-morrow morning to make a showing for a continuance.

WEDNESDAY, *March 17th, A. D.* 1875.

Court met pursuant to adjournment.

99. Succession of ADAM HURT.

Opposition sustained. Harriet Hurt appointed administratrix upon complying with the requisites of law.

313 STATE OF LOUISIANA,
Parish of East Carroll.

I, Wm. Rous, clerk of the 8th judicial district court in and for said parish and State, do hereby certify that the above and foregoing eleven pages contain a full, true, and correct transcript of all the papers and documents filed and all the proceedings had in the matter of the succession of Adam Hurt, deceased, as taken from the original papers now on file in this office and the records of the late parish court, and that as the clerk of the 8th district court I am the lawful custodian of the files and records of said late parish courts.

Witness my hand & seal of office this 20th day of April, [SEAL.] A. D. 1886.

WM. ROUS,
Clerk 8th District Court.

See page 323 for endorsement.

314 1 E.

To the Hon. Charles E. Moss, Jr., parish judge of the parish of Carroll, State of Louisiana:

The petition of Harriet Hurt, a resident of the parish of Carroll, widow of the late Adam Hurt, with respect shows that Benjamin H. Lanier, as public administrator of the succession of her late husband, has advertised for sale the following-described property, to wit: Two plows, one sweep, one two-horse wagon, 2 hoes, 1 axe, 2 sets of harness, 1 black mare mule, 1 mouse-col'd mule, and one dark bay mare, the property of said succession, valued on the inventory at the sum of three hundred and thirty-two & $\frac{25}{100}$ dollars.

Shows that there is no neces-ity of the sale of said property for the reason that there are no debts of said succession, and that said Lanier has no right to dispose of the property of said succession, he only being in possession of same as public administrator pending the opposition of William Alcott and your petitioner for administration.

She shows further that said Lanier has had possession of and disposed of a lot of cotton and cotton seed and corn belonging
315 to said succession, and the proceeds of the sale of said property will exceed the legal debts of said succession to the amount of at least three hundred dollars, as petitioner believes.

She shows that she is the owner of an individual half of the property of said succession as widow in community and of the other half as widow in neces-itous circumstances, the whole amount not being worth the sum of one hundred dollars.

Shows that she will be greatly injured by the sale of said property, as the same is valuable to her and she needs the same at this time to make a crop during this year, but said sale will be made by said Lanier on the 7th day of Jan'y, 1875, unless restrained by a writ of injunction from your hon. court.

She shows further that she desires to be put in possession of said property of said succession, and that said Lanier, adm'r, be ordered to file his account and show what he has done with the cotton, cot-on seed, and corn taken possession of by him belonging to said succession.

Wherefore she prays that said Lanier, pub. adm'r, be duly cited to appear and answer hereto.

That a writ of injunction issue injoining and restraining
316 him from selling the said property of said succession; that he be ordered to file his account as administrator of the said succession on or before the 1st day of the Jan'y term of court, Monday, the 11th day of Jan'y, A. D. 1875.

That upon due hearing hereof the injunction be sustained and the property belonging to said succession be ordered to be turned over to her.

And for costs and general relief.

MONTGOMERY & DELONY, *Att'ys.*

Harriet Hurt, being duly sworn, says that the facts and allegations in the foregoing petition are true and correct.

her
HARRIET x HURT.
mark.

Sworn to & subscribed before me this 6th day of Jan'y, A. D. 1875.

C. E. MOSS, JR.,
Parish Judge.

Upon reading and considering the foregoing petition and affidavit, it is ordered that a writ of injunction issue as prayed for upon giving bond & security in the sum of one hundred dollars. It is further ordered that Benjamin H. Lanier, public administrator,
317 file an account of his acts and doings as administrator in charge of the succession of Adam Hurt, on or before Monday the 11th day of January next, A. D. 1875.

Done & signed in open court this 6th day of Jan'y, A. D. 1875.

C. E. MOSS, JR.,
Parish Judge.

Endorsed as follows:
1343. Harriet Hurt *vs.* B. H. Lanier, pub. adm'r. Pet. & injunction. Filed Jan. 6th, 1875. T. I. Galbreth, d'y clerk. Recorded in Book A, folio 457.

STATE OF LOUISIANA, *Parish of Carroll,* } *ss:*

Parish Court.

HARRIET HURT *vs.* B. H. LANIER, Pub. Adm'r. } No. 1343.

The State of Louisiana & said court to B. H. Lanier, public adm'r, residing in said parish and State, Greeting:

You are hereby summoned either to comply with the demand contained in the petition of the said Harriet Hurt, a duly certified copy of which accompanies this citation, or to deliver your
318 answer to the said petition in writing in the office of the clerk of said court, held at Providence, in said parish, within ten days after service hereof and according to law.

Witness the Honorable C. E. Moss, Jr., judge of said court,
[SEAL.] and the seal of said court, this 7th day of January, A. D. 1875.

DAVID JACKSON, *Clerk,*
By I. L. LEWIS, *D. C.*

Received, Providence, Carroll parish, Louisiana, January 7th, A. D. 1875, the within citation and a certified copy of same and a certified copy of plaintiff's petition and order thereon, and on the same day, month, and year I served said copies by handing them to B. H. Lanier, public adm'r, in person, in the town of Lake Providence, said parish & State.

N. BURTON, *Sheriff,*
By T. I. GALBRETH, *D'y Sheriff.*

Endorsed as follows:
1343. Harriet Hurt *vs.* B. H. Lanier, pub. adm'r. Citation.

Sheriff's cost:

Citation	2 00
Injunction	2 00
	$4 00

Ret. & filed Jan'y 7th, 1875.

T. I. GALBRETH, *D'y Clerk.*

319 STATE OF LOUISIANA, }
Parish of Carroll. }

Parish Court.

HARRIET HURT
vs.
B. H. LANIER, Pub. Adm'r. } No. —.

Know all men by these presents that we, Harriet Hurt, as principal, and Edward J. Delony, as security, are held and firmly bound unto Benj. H. Lanier, pub. administrator, in the full sum of one hundred dollars, lawful money of the United States; — the payment of which we bind ourselves, heirs, administrators, &c., this 6th day of January, A. D. 1875.

The condition of this bond is such that as Harriet Hurt has presented her petition and an order of court for an injunction restraining said B. H. Lanier from selling the property of the succession of Adam Hurt, described in the petition:

Now, if said Harriet Hurt & E. J. Delony shall well and truly pay the said B. H. Lanier, adm'r, all such damages as may be recovered against us should it be decided that the injunction be wrongfully obtained, then this bond will be null and void; otherwise have full force and effect.

her
HARRIET x HURT.
mark.
E. J. DELONY.

Attest: S. DUNCAN GLENN.

320 Endorsed as follows:

1343. Harriet Hurt *vs.* B. H. Lanier, pub. adm'r. Injunction bond. Filed Jan'y 6th, 1875. T. I. Galbreth, deputy clerk.

STATE OF LOUISIANA, }
Parish of Carroll. }

Parish Court.

HARRIET HURT
vs.
B. H. LANIER, Pub. Adm'r. } No. 1343.

To B. H. Lanier, pub. adm'r of said parish and State, Greeting:

Whereas Harriet Hurt has filed in the office of the clerk in and for said parish her petition, with an affidavit of facts alleged therein, praying that the said B. H. Lanier, public administrator, be enjoined and directed not to proceed any further in the sale of the following-described property, to wit:

Two plows, 1 sweep, 1 two-horse wagon, two horses, 1 axe, 2 sets of harness, 1 black mare mule, 1 mouse-col'd mule, and 1 dark bay mare, the property of said succession, advertised for sale by the said B. H. Lanier, public adm'r, under a certain writ of sale issued from

our said court in the succession of Adam Hurt, upon which
321 it appears that the judge of said court has authorized an injunction to issue upon the said Harriet Hurt furnishing bond with solvent security in the sum of one hundred dollars, conditioned according to law;

And the said Harriet Hurt having given bond and security as required in said authorization, you are therefore commanded and strictly enjoined in the name of the State of Louisiana and said court not to proceed any further with the sale of said property until further order of said court in the premises.

Witness the Hon. C. E. Moss, Jr., judge of said court,
[SEAL.] and the seal of said court, this 7th day of January, in the year of our Lord 1875.

DAVID JACKSON, *Clerk*,
By T. I. GALBRETH, *D'y Cl'k.*

Received, Providence, Carroll parish, Louisiana, January 7th, A. D. 1875, the within writ of injunction and a certified copy of same, and on same day, month, and year I served said copy of injunction on B. H. Lanier, public administrator, by handing same to him in person in the town of Lake Providence, said parish and State.

NICHOLAS BURTON, *Sheriff*,
By T. I. GALBRETH, *D'y Sheriff.*

322 Endorsed as follows:

1343. Harriet Hurt *vs.* B. H. Lanier, pub. adm'r. Writ of injunction. Ret. & filed Jan. 7th, 1875. T. I. Galbreth, d'y clerk.

Extracts from Minutes of Court.

MONDAY, *January 18th*, 1875.

Court met pursuant to adjournment.

HARRIET HURT
vs.
B. H. LANIER, Pub. Adm'r. } 1343.

Default.

MONDAY, *March 9th*, 1875.

Court met pursuant to adjournment.

HARRIET HURT
vs.
B. H. LANIER, Pub. Adm'r. } 1343.

Transferred to probate court.

323 STATE OF LOUISIANA,
Parish of East Carroll.

I, Wm. Rous, clerk of the 8th judicial district court in and for said parish and State, duly commissioned and qualified, do hereby certify that the above and foregoing nine pages contain a

full, true, and correct transcript of all the papers and documents filed and of all the proceedings had in the suit of Harriet Hurt *vs.* B. H. Lanier, pub. adm'r, in our late parish court in and for said parish of Carroll, said suit being numbered 1343 on the docket of said court, as shown by the original papers in said suit now on file in this office and the records of said court, and that as the clerk of the 8th district court I am the lawful custodian of the files and records of said late parish court.

Witness my hand and seal of office this 20th day of April, A. D. 1886.

[SEAL.] WM. ROUS,
Clerk 8th District Court.

[Endorsed:] No. 110. U. S. circuit court, western dist. La. Heirs J. C. Pickett *vs.* George Foster *et als.* Filed in evidence on behalf of complainants July 19th, 1887. J. B. Beattie, d'y clerk.

324 1 D.

Record in Succession of Martin Lee.

To the Hon. C. E. Moss, parish judge of Carroll parish, State of Louisiana:

The petition of William C. Buchanan, a resident of your said parish and State, respectfully represents that Martain Lee, formerly a resident of the aforesaid parish and State, died on — day of August, 1874, leaving considerable personal property. Petitioner represents that said Martin Lee was indebted into the mercantile firm of Massingill and Buchanan, of which he is a member.

Wherefore he prays that he be appointed administrator of the said succession, and that an inventory be ordered, and for all necessary orders and for general relief.

ROBERTS AND NEWMAN, *Att'ys.*

Upon reading and considering the foregoing petition it is ordered that a commission issue to W. H. Stroube, a notary public, to take the inventory in the above-said succession, and that after the legal delays W. C. Buchanan be appointed administrator of the succession of Martin Lee, deceased, upon his giving bond as required by law.

Done, read, & signed in chambers this 28th day of August, 1874.

C. E. MOSS, JR.,
Parish Judge.

325 Endorsed as follows:

Succession of Martin Lee. Application of W. C. Buchanan for administration. Filed August 29th, 1874. T. I. Galbreth, d'y clerk.

To the hon. parish and *ex officio* probate judge of the parish of Carroll, State of Louisiana:

In the matter of the succession of Martin Lee, deceased, the petition of opposition of Mrs. Martha Lee, residing in your aforesaid

parish, respectfully represents that one Wm. C. Buchanan did apply to your hon. court for the administration of the above-named succession on or about the — day of August, 1874, and that notice of said application was published on the 29th of same month.

Now, petitioner opposes the application of said Buchanan and shows she has a better right to the administration of said succession than said applicant, inasmuch as she is the surviving wife of said Martin Lee, dec'd, and the natural tutrix of their minor children,

and the said Buchanan having claimed the administration of
326 said succession upon the allegation that he was only a creditor thereof.

Wherefore she prays that the application of said Buchanon be rejected and that she be appointed and confirmed administratrix of the succession of Martin Lee, her deceased husband, and for general relief.

LEONARD & KENNEDY, *Att'ys.*

Endorsed: Suc. of Martin Lee. No. 98. Opposition of Martha Lee. Filed Sept. 4th, 1874. T. I. Galbreth, d'y clerk.

To the honorable judge of the parish court for the parish of Carroll, State of Louisiana:

The petition of Benjamin H. Lanier, the public administrator for the aforesaid parish, respectfully represents that in the matter of the succession of Martin Lee, dec'd, there is a contest for the administration of said estate between W. C. Buchanan and Mrs. Widow Martha Lee.

That petitioner is entitled to administer in case of contest as aforesaid.

327 Wherefore he prays to be appointed and get letters of administration of said estate of Martin Lee, dec'd. Inventory has been taken. For general relief.

ROBERTS & NEWMAN, *Att'ys.*

Order.

Let Benjamin H. Lanier be appointed administrator of the estate of said Martin Lee, dec'd, by virtue of his office of public administrator, and on his qualifying by proper oath let letters of administration issue to him.

Done and signed at chambers this 10th day of September, A. D. 1874.

C. E. MOSS, JR.,
Parish Judge.

Endorsed: No. 98. Succession of Martin Lee. Appointment of B. H. Lanier adm'r. Filed September 11th, 1874. T. I. Galbreth, clerk.

328 1 D.

Oath.

STATE OF LOUISIANA, }
Parish of Carroll. }

Parish Court.

I, B. H. Lanier, do solemnly swear that I will faithfully perform and discharge the duties incumbent on me as administrator of the succession of the late Martin Lee, deceased, according to the best of my ability and understanding, so help me God.

B. H. LANIER,
Public Adm'r.

[SEAL.]

Sworn to and subscribed before me this eleventh day of September, A. D. 1874.

THO. I. GALBRETH,
Deputy Clerk.

Endorsed: Succession of Martin Lee. Oath of public administrator. Filed Sept. 11th, A. D. 1874. T. J. Galbreth, d'y clerk.

329 *Letters.*

STATE OF LOUISIANA, }
Parish of Carroll. }

Parish Court.

Be it remembered that whereas B. H. Lanier has been appointed administrator of the succession of the late Martin Lee, deceased, and having given bond and security and taken the oath required by law is therefore fully authorized and empowered to perform and discharge the duties of said appointment.

Witness the Hon. C. E. Moss, Jr., judge of said court, [SEAL.] and the seal of said court this the 11th day of Sept., A. D. 1874.

T. I. GALBRETH,
Deputy Clerk.

Endorsed: Succession of Martin Lee. Letters of administration. Filed Sept. 11th, 1874. T. I. Galbreth, d'y clerk.

330 *Inventory.*

STATE OF LOUISIANA, }
Parish of Carroll. }

Be it known and remembered that in pursuance of an order to me issued by the honorable probate court in and for the parish of Carroll and State of Louisiana, and of a commission issued by T. I. Galbreth, deputy clerk of said court, and to me directed, authorizing

and requiring me to take an inventory and cause an appraisement to be made of all the property, effects, rights, and credits belonging to the succession of the late Martin Lee, deceased, which may be found in our said parish, &c.—

I, Wm. H. Stroube, notary public in and for said parish and State, proceeded to execute said order by appointing E. C. Jackson and Wm. A. Richardson to act as appraisers, to whom I administer the following oath, to wit:

We do, each of us, solemnly swear that we will well and truly apprais- and the true cash value place upon all the property, effects, rights, and credits belonging to the succession of the late Martin Lee, deceased, which may be submitted to us for our decision to the best of our ability and understanding, so help us God.

E. C. JACKSON.
W. A. RICHARDSON.

331 Sworn to and subscribed before me this 17th day of September, A. D. 1874.

WM. H. STROUBE,
Notary Public.

We then proceeded to make the following inventory and appraisment:

Item:	19½ acres cotton, valued at about		700 00
	13 " corn, " " "		150 00
Item:	1 grey mare, mule, branded C. S., valued at		50 00
	1 dapple grey mare, mule, "		75 00
	1 brown horse, mule, "		115 00
	1 " mare, " "		125 00
	1 sorrel mare & colt, "		45 00
	4 hogs, "		16 00
Item:	1 four-horse wagon (old), "		25 00
	1 ambulance & double harness, "		75 00
	4 sets wagon gears, "		6 00
	1 saddle & bridle, "		2 50
Item:	1 lot old bedding, "		2 00
	1 " books, "		5 00
	1 " kitchen utensils and plates, &c., "		2 50
	1 old gun "		2 00
	1 small looking-glass, "		25
	1 coal-oil lamp, "		50
			$1,096 75

332 *Recapitulation.*

Crops in field	550 00
Stock	426 00
Farming implements, &c.	108 50
Household & kitchen utensils	12 25
	$1,096 75

This done, inventory commenced and closed, in the presence of L. C. Massingill and Travis Mabin, witnesses of lawful age, who hereunto sign their names, together with the said appraisers and me, the said notary, this the 17th day of September, A. D. 1874.

E. C. JACKSON.
W. A. RICHARDSON.

Witnesses:
L. C. MASSENGILL.
N. T. MABIN.

WM. H. STROUBE,
Notary Public.

Endorsed: No. 98. Succession Martin Lee, dec'd. Inventory. Filed September 22d, A. D. 1874. T. I. Galbreth, d'y clerk.

333 To the hon. judge of the parish court for the parish of Carroll, Louisiana:-

The petition of Benjamin H. Lanier, administrator of the estate of Martin Lee, dec'd, respectfully represents that among the effects of the said estate there is a crop of cotton and corn which is perishable property and if not sold will become deteriorated in value or perish.

That there are debts due by the said estate which should be paid.

Wherefore petitioner prays that the hon. court authorize him to sell said crops of cotton and corn on the premises to pay the debts of said estate after legal advertisement.

ROBERTS & NEWMAN, *Att'ys.*

Let a writ of sale issue to Benjamin H. Lanier, as prayed for, to advertise and sell on the premises of the late Martin Lee all the corn and cotton belonging to said estate.

Done, read, and signed at chambers this October 28th, 1874.

C. E. MOSS, JR.,
Parish Judge.

Endorsed: Succession of Martin Lee. Pet. & order for sale. Filed Oct. 28th, 1874. T. I. Galbreth, d'y clerk.

334 To the hon. the parish judge of Carroll parish:

The petition of Martha Lee with respect shows that her husband, Martin Lee, lately died in this parish, leaving as the issue of their marriage the following-named minors, to wit: Caroline, Martin, Pri-cilla, Terry, Le Fith, & Martha Lee.

That she is the mother of said minors and they are without a tutor; that their interest requires they should be represented by a tutor.

Wherefore she prays that she be confirmed as natural tutrix of said minors and that letters issue to her accordingly and that George Pride be appointed under tutor.

MONTGOMERY & DELONY, *Att'ys.*

Upon consideration of the foregoing petition it is ordered that Martha Lee be, & she is hereby, confirmed as natural tutrix of the

above-named minor children, issue of her marriage with Martin Lee, and that George Pride be appointed under tutor.

Done and signed in chambers on this 31st day of October, A. D. 1874.

C. E. MOSS, JR.,
Parish Judge.

335 Endorsed: Tutorship of minors of Martin Lee. Appointment of tutrix. Filed Nov'r 10th, 1874. T. I. Galbreth, d'y clerk.

I, Martha Lee, do solemnly swear that I will faithfully perform and discharge the duties of natural tutrix to my minor children, Caroline Martin, Priscilla, Ter-y, Lefitte, and Martha Lee, to the best of my ability and understanding, so help me God.

her
MARTHA x LEE.
mark.

Sworn to & subscribed before me this 31st day of October, A. D. 1874.

DAVID JACKSON, *Clerk.*

Endorsed: Succession of Martin Lee. Oath of natural tutor. Filed Nov. 10, 1874. T. I. Galbreth, d'y clerk.

336 I do solem-ly swear that I will discharge and perform the duties of under tutor for minors Caroline, Martin, Precilla, Terry, Lefitte, and Martha Lee to the best of my ability and understanding, so help me God.

his
G. D. x PRIDE.
mark.

Sworn to & subscribed before me this 31st day of October, A. D. 1874.

DAVID JACKSON, *Clerk.*

Endorsed: Succession of Martin Lee. Oath of under tutor. Filed Nov. 10, '74. T. I. Galbreth, d'y clerk.

Succession of MARTIN LEE.

Op-osition of Mrs. Martha Lee.

The within opposition of Mrs. Martha Lee being taken up for trial, the law and evidence being in favor of opponent, Mrs. Martha Lee, it is therefore ordered, adjudged, and decreed that the within opposition be overruled and set aside and that the applicant, Wm. C. Buchanan, pay all costs of this opposition.

Read and signed in open court this 15th day of March, A. D. 1875.

C. E. MOSS, JR.,
Parish Judge.

337 *Extracts from Minutes of Court.*

TUESDAY, *October* 13*th*, *A. D.* 1874.

Court met persuant to adjournment.

No. 98. Succession of MARTIN LEE.

Fixed for Saturday, 17th inst.

MONDAY, *March* 15*th*, 1875.

Court met pursuant to adjournment.

No. 98. Succession of MARTIN LEE.

Opposition sustained.

WEDNESDAY, *March* 17*th*, 1875.

Court met pursuant to adjournment.

No. 98. Succession of MARTIN LEE.

New trial granted *ex officio*. Opposition sustained.

338 STATE OF LOUISIANA, }
Parish of East Carroll. }

I, Wm. Rous, clerk of the 8th judicial district court in and for said parish and State, do hereby certify that the above and foregoing fourteen pages contain a full, true, and correct transcript of all the papers and documents filed and all proceedings had in the matter of the succession of Martin Lee, deceased, as taken from the original papers now on file in this office and the records of our late parish court, and that as the clerk of the 8th district court I am the lawful custodian of the files and records of said late parish court.

[SEAL.] Witness my hand & seal of office this 27th day of April, A. D. 1886.

WM. ROUS,
Clerk 8th District Court.

[Endorsed:] No. 110. U. S. circuit court, western dist. La. Heirs J. C. Pickett *vs.* George Foster *et als.* Filed in evidence on behalf of complainants July 19, 1887. J. B. Beattie, d'y clerk.

339 1 F.

Record in Suit of F. M. Goodrich, Tutor, vs. N. J. Bell.

STATE OF LOUISIANA,
Parish of Carroll.

Thirteenth District Court.

F. M. GOODRICH, Tutor,
vs.
NARCISSA J. BELL.

By reason of the law and evidence and the foregoing written release and acquittance and acknowledgment of indebtedness—

It is therefore ordered, adjudged, and decreed that the foregoing final account of Ferd. M. Goodrich, tutor of Narcissa J. Morgan (now Bell), be, and the same is hereby, appointed and homologated and said tutor final-y discharged and his bond cancelled.

It is further ordered and adjudged and decreed that said Ferd. M. Goodrich have and recover of said Narcissa J. Bell the sum of nine hundred and three & $\frac{79}{100}$ dollars, with legal interest from 15th of March, 1862, amount acknowledged to be due by her, and the legal or tacit mortgage in favor of said tutor be recognized to date from the 3rd of December, 1855.

Done and signed at Floyd, parish of Carroll, Louisiana, this the 26 day of January, A. D. 1867.

J. L. CHEATHAM,
Clerk District Court.

340 STATE OF LOUISIANA,
Parish of East Carroll.

I, Wm. Rous, clerk of the 8th district court and *ex officio* recorder in and for said parish, do hereby certify that the judgment of which the above and foregoing is a true and correct copy has never been recorded in the mortgage records of said parish; and I further certify that I have carefully examined the mortgage records of the above-named parish and State and that no mortgage, either legal, conventional, or judicial, has ever been recorded thereon in favor of said Ferd. M. Goodrich, tutor of said Narcissa J. Morgan (now Bell).

[SEAL.] Witness my hand and seal of office this 23rd day of February, A. D. 1886.

WM. ROUS,
Clerk & ex Officio Recorder.

[Endorsed:] F. M. Goodrich, tutor, *vs.* Narcissa J. Bell. Judgment. No. 110. U. S. circuit court, western dist. La. Heirs J. C. Pickett *vs.* George Foster *et als.* Filed in evidence on behalf of complainants July 19th, 1887. J. B. Beattie, d'y clerk.

1 G.

341 *Record in the Suit of F. M. Goodrich, Tutor, vs. A. N. Ricketts.*

STATE OF LOUISIANA, }
Parish of Carroll. }

Thirteenth District Court.

F. M. GOODRICH, Tutor, }
vs.
AGNESS A. RICKETTS. }

By reason of the law and evidence and the written release and acquittance and acknowledgement of indebtedness, all hereto annexed—

It is therefore ordered, adjudged, and decreed that the annexed final account and settlement of Ferd. M. Goodrich, tutor for Agnes A. Morgan (now Ricketts), be, and the same is hereby, approved and homologated and said tutor finally and fully discharged from his said trust and his bond as tutor cancelled.

It is further ordered, adjudged, and decreed that Ferd. M. Goodrich have and recover of the said Agnes A. Ricketts the sum of thirty-four hundred and ninety $\frac{71}{100}$ dollars, with legal interest thereon from the 15th day of March, A. D. 1862, the amount acknowledged to be due by her, and that the legal or tacit mortgage in favor of said tutor be recognized to date from the 3rd of December, 1855.

Done and signed at Floyd, Carroll parish, Louisiana, this the 25th day of January, A. D. 1867.

J. L. CHEATHAM,
Clerk District Court.

342 STATE OF LOUISIANA, }
Parish of East Carroll. }

I, Wm. Rous, clerk of the 8th district court in and for said parish and *ex officio* recorder for said parish, do hereby certify that the judgment of which the above and foregoing is a true and correct copy has never been recorded in the mortgage records of said parish; and I further certify that I have carefully examined the mortgage records of the above-named parish and State, and that no mortgage, either legal, conventional, or judicial, has ever been recorded thereon in favor of said Ferd. M. Goodrich, tutor of the said Agnes A. Ricketts.

[SEAL.] Witness my hand and seal of office this 23rd day of February, A. D. 1886.

WM. ROUS,
Clerk and ex Officio Recorder.

[Endorsed:] 110. F. M. Goodrich *vs.* Agnes A. Ricketts. Judgment. Filed in evidence on behalf of complainants July 19th, 1887. J. B. Beattie, d'y clerk.

343 *Interrogatories Propounded to Picketts & Withers.*

Circuit Court of the United States for the Western District of Louisiana, Session at Monroe.

HEIRS J. C. PICKET
vs.
GEORGE FOSTER *et als.* } No. 110.

Interrogatories to be propounded to Joseph Desha Pickett, Theodore John Pickett, Willliam H. Pickett, and William T. Withers, witnesses residing at Frankfort, Kentucky, whose depositions when taken before a Louisiana commissioner or an United States commissioner or any judge, justice of the peace, or notary public or other party authorized to take depositions residing at Frankfort, Kentucky, will be read in evidence in behalf of complainants.

Intg. 1st. Are you or either of you acquainted with the parties to this suit or either of them?

Intg. 2nd. Did you know the late James C. Pickett?

Intg. 3rd. When did he die? Did he leave a will? Who was appointed administrator of his estate and by what court?

Intg. 4th. Who were the sole surviving heirs of the late James C. Pickett?

Intg. 5th. Do you know or have you any knowledge of any claim or indebtedness that was owing to James C. Picket at the
344 time of his death by Mrs. A. M. Ricketts and Mrs. N. J. Bell, of the parish of Carroll, Louisiana? If yea, state what you know about said claim—how was it evidenced, how was it secured, and describe it fully.

Intg. 6th. Do you know anything about this suit, who the complainants are and upon what claim it is founded?

Intg. 7th. If yea, and you say the suit is founded upon certain notes executed at Memphis January 1st, 1866, by Mrs. A. M. Ricketts and Mrs. N. J. Bell in favor of James C. Pickett, secured by deed of trust on certain lands in the parish of Carroll, Louisiana, will you state unto whos- hands said claim passed after the death of James C. Pickett and in what capasity it was held? Was it held by the administrator of James C. Pickett's estate appointed by the Fayette county court of Kentucky?

Intg. 8th. If yea, will you or either of you explain fully all you may know about said claim, to whom was it given, where was it sent, and what was done towards enforcing payment of said claim against the makers of said notes and the property embraced in the deed of trust situated in Carroll parish, Louisiana?

345 To whom were said notes given, if to any one, to be brought to Louisiana for the purpose of having the same collected, and was there any agreement in relation to the collection of said notes made by the administrator of J. C. Pickett's estate and

any other party or parties? State all you may know about the matter.

Intg. 9th. Who was the agent or agents employed by you, if any, to cause said notes and deed of trust to be enforced or foreclosed in Carroll parish, Louisiana? Please explain when this was and all you may know about it. Did you take any receipt or writing from said agent or agents? If so, annex the same to your answers.

Intg. 10th. If you or either of you say you sent said claims to Carroll parish, Louisiana, to have the deed of trust or mortgage foreclosed, will you state all you may know about what was done with said claim?

Intg. 11th. Have you any knowledge concerning any suit brought to enforce the payment of said notes and the foreclosure of said deed of trust in the district court of the parish of Carroll, Louisiana? If so, state what suit was brought and by whom, in whos-
346 name was the suit brought in behalf of the estate of J. C. Picket, and against whom was it brought and when was it brought.

Intg. 12th. Have you any knowledge that B. H. Lanier, public administrator, brought suit in the district court of the parish of Carroll, La., in behalf of the estate of James C. Pickett against the maker of said notes and Ezra Wheeler & Co. and George Foster to enforce said claim and foreclose said deed of trust or mortgage against the hypothecated property? If yea, state all you know about it. What became of the suit? Did it result in a judgment or was it dismissed? If yea, when and by whom?

Intg. 13th. If you say the suit was dismissed by George Foster, public administrator, please state when did you first learn of the dismissal of that suit. Were you ever informed by George Foster or J. W. Montgomery, the attorney who brought the suit, or by B. H. Lanier, public administrator, or by any one else that said suit had been dismissed on the 4th of December, 1875, for want of prosecution by George Foster, public administrator?

Intg. 14th. Why was it that you delayed a renewal of the suit or the bringing of a new suit or the claim during the long
347 period that elapsed from the time said suit was discontinued by George Foster, public administrator, until the present suit was brought? Why did you not immediately renew the suit and proceed judicially to enforce the claim? What caused this long delay? Please explain all you know about this matter. Did you know that George Foster had been appointed public administrator to succeed B. H. Lanier, and that on the 4th of December, 1875, he caused said suit to be dismissed by refusing to continue the prosecution thereof; if so, when were you first informed of the fact?

Intg. 15th. Did you or either of you ever have an interview with George Foster; if so, when and where, at whos- instance, and for what purpose?

Intg. 16th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case or either of them or that may be material to the sub-

ject of this your examination or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

A true copy.

[SEAL.] W. G. WYLY, *Att'y.*

Attest: J. B. BEATTIE, *D'y Cl'k.*

348 [Endorsed:] No. 110. U. S. circuit court, 5th circuit, western district of Louisiana. Heirs J. C. Pickett *vs.* George Foster *et als.* Copy of interrogatories.

349 *Cross-Intgs.*

HEIRS J. C. PICKETT
vs.
GEORGE FOSTER. } No. 110.

Cross-interrogatories propounded by defendant George Foster to Joseph Desha Pickett, Wm. H. Pickett, & William H. Withers, witnesses of plaintiffs.

1st. If, in answer to 8th interrogatory-in-chief, you have stated that the notes enquired of were sent to Louisiana for collection, state by whom they were so sent & for whose account.

2nd. If, in answer to interrogatory-in-chief No. 9, you say that an agent was employed to foreclose the notes enquired of, state who that agent was & who employed him. If there was any written agreement or memorandum of an agreement with the attorney or agent so employed, annex either the original to your answer, or a copy thereof, to be certified by the commissioner who receives your deposition.

3rd. To whom did you deliver possession of the notes enquired of?

4th. From whom did you receive possession of them after the dismissal of the suit instituted by J. W. Montgomery on them in the name of Lanier, public adm'r, and when did you so receive them?

350 5th. In whose possession have said notes been since the termination of said suit, and to whom have they belonged?

6th. To whom do they belong now, and when did the present owner acquire the ownership thereof?

7th. From whom did you receive the information of the facts alleged to exist in plaintiffs' bill of complaint filed herein?

8th. Have you a written or verbal contract with your attorney, W. G. Wyly, in relation to the prosecution of this suit?

9th. Is it not a fact that you valued the claim in suit so highly that you only permitted suit to be brought on it on condition that your att'y, W. G. Wyly, advanced the costs and took the case on a contingent fee?

10th. Why was no attempt made to enforce the asserted rights of pl'ffs while the property was in the hands of the original owners & grantors of plaintiffs' alleged rights?

Defendant, reserving all legal objection to the admissibility
351 of the testimony sought to be elicited from the witnesses named, propounds the foregoing interrogatories and waives further delays.

C. J. & J. S. BOATNER, *Solicitors.*

A true copy.
Attest:

[SEAL.] J. B. BEATTIE, *D'y Cl'k.*

352 *Commission.*

Circuit Court of the United States of America, Fifth Circuit and Western District of Louisiana, Holding Session in the City — Monroe, La.

To any Louisiana commissioner or U. S. com'r or any judge, justice of the peace, or notary public residing in Frankfort, Kentucky:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you Joseph Desha Pickett, Theadore John Pickett, William H. Pickett, and William T. Withers, all of Frankfort, Kentucky, and them duly examine on the annexed interrogatories and cross-interrogatories on oath, touching and concerning certain matters and things in a case now pending in the said court wherein The Heirs of J. C. Pickett are plaintiffs and George Foster *et als.* are defendants, and the same examinations so taken and reduced to writing you certify under your hand and seal and send enclosed to this court on or before October 11th,
353 1886, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Monroe, La., this 2ond day of September, in the year of our Lord 1886, and of the Independence of the United States of America the 111th.

[SEAL.] J. B. BEATTIE, *D'y Clerk.*

[Endorsed:] No. 110. U. S. circuit court. Heirs J. C. Pickett *vs.* George Foster *et als.* Commissioner. In equity.

354 *Ans. of the Witnesses & Exhibits.*

STATE OF KENTUCKY,
Franklin County, at the City of Frankfort.

In Matters in Circuit Court of the United States of America for the 5th Circuit & Western District of Louisiana, Holding Sessions in the City of Monroe, La.

HEIRS OF J. C. PICKETT, Complainants,
vs.
GEORGE FOSTER *et als.*, Defendants. } No. 110.

Depositions for complainants.

The depositions of witnesses produced, sworn, and examined on the 13th day of September, anno Domini 1886, at the office of John B. Lindsey, on the southwest corner of Main and St. Clair streets, in the city of Frankfort, Franklin county, in the State of Kentucky, by virtue of a commission which issued from the circuit court of the United States of America in the fifth circuit and western district of Louisiana, holding session in the city of Monroe, Louisiana, of date September 2nd, 1886, to any notary public or other officers named directed for the examination, on the interrogatories and cross-interrogatories thereto annexed, of certain witnesses—Joseph Desha Pickett, Theadore John Pickett,
355 William H. Pickett, and William T. Withers—on oath touching and concerning certain matters and things in the above-styled cause now pending in said court wherein The Heirs of J. C. Pickett are plaintiffs and George Foster and others are defendants, which said commission and interrogatories & cross-interrogatories are hereto annexed.

JOSEPH D. PICKETT, a witness for complainants, being produced, sworn, and examined, deposeth and saith in answer to the interrogatories & cross-interrogatories herewith filed as follows:

Answer to Int. 1. Yes; I know the complainants. I am one of them and my nephew, Theadore John Picket, is the other. I know George Foster, Mrs. A. M. Ricketts, and Mrs. N. J. Bell. I am not acquainted with the other defendants.

Answer to Int. 2. Yes; he was my father.

Answer to Intg. 3. He died July 10th, 1872. On the 20th of May, 1873, I was appointed administrator of James C. Pickett's estate by the Hon. B. F. Graves, presiding judge of Fayette county court of Kentucky, and received letters of administration. No will has ever been probated.

Answer to Int. 4th. Whem my father, James C. Pickett,
356 died, my brother, John T. Pickett, and myself were the sole surviving heirs. Since then John T. Pickett died intestate and left an only child, Theodore John Pickett, as his sole heir and

legal representative. He succeeds to all the rights of ownership which his farther was entitled to in the notes involved in this litigation.

Answer to Int. 5th. Yes; at the time of his death James C. Pickett owned three notes made payable to his order by Mrs. A. M. Ricketts and Mrs. N. J. Bell, one for five thousand five hundred dollars ($5,500.00), one for six thousand dollars ($6,000.00), and one for six thousand five hundred dollars ($6,500.00), due one, two, and three years after date; they were all dated at Memphis, Tennessee, January 1st, 18–6, and were made payable at the Farmers' bank, Frankfort, Kentucky. They were also secured by special mortgage or deed of trust on certain lands in the parish of Carroll, Louisiana, then owned by the makers of said notes.

Answer to Int. 6th. Yes; Theodore John Pickett and myself are the complainants, being the sole heirs-at-law of James C. Pickett. This suit is based on the mortgage notes described in my answer to last interrogatory.

Answer to Int. 7th. By the death of my father the claim
357 passed into my hands as administrator of his estate, appointed by the Fayette county court of Kentucky, and I held the notes in said capacity.

Answer to Int. 8th. On the 27th of September, 1873, I put all of said notes and the original act of mortgage into the hands of R. M. Scanlan and J. H. Green, and I made them my agents to take said claims to Carroll parish, Louisiana, and put them in the hands of attorneys-at-law in Louisiana for collection, and they promised to attend to the matter and see that proper legal steps were taken to force the collection thereof. There was a written agreement or receipt dated September 27, 1873, given to me as administrator of James C. Pickett's estate by said R. M. Scanlan and J. H. Green in relation to the collection of said notes on terms proposed by me in a letter of that date, and I gave them the letter proposing terms of employment, leaving blank the names of the attorneys so that *that* they could select a good lawyer or lawyers, and give it as authority to bring the suit, and I will annex to my deposition that letter and also attest*ate* copy of the receipt signed by R. M. Scanlan and J. H. Green, as they both evidence our agreement in reference to
358 the collection of said claim. My agents, Scanlan and Green, took said notes and original deed of trust to Carroll parish, Louisiana, and I am since informed employed Judge J. W. Montgomery to bring suit thereon, giving him the necessary papers and also my letter proposing terms of employment, &c., and, as I could not sue in Louisiana under my appointment of administrator in Kentucky, I am since informed said attorney got the public administrator, B. H. Lanier, to file the suit for the estate of James C. Pickett, which said suit was subsequently dismissed by George Foster, public administrator. There was no agreement in relation to the collection of said notes made by me as administrator of James C. Pickett's estate with any other parties or party.

Answer to Int. 9th. It was on the 27th of September, 1873, that I put said notes and original mortgage or deed of trust into the hands

of R. M. Scanlan and J. H. Green, and they were my agents to take said claims to Louisiana and employ counsel to prosecute the same. Our agreement was in writing and I annex attested copy of the same as part of my answer and it is marked Exhibit "A." I also annex the letter marked Exhibit "B" which I gave R. M. Scanlan and J. H. Green, addressed to blank attorneys, in relation to
359 the terms of employment. I did not know to what attorneys to address it, and I left it to my agents to employ a good attorney or good attorneys to bring suit and enforce the payment of the notes. It is refer-ed to in the receipt given by R. M. Scanlan and J. H. Green, and is part of our agreement. The agreement evidenced by said receipt of R. M. Scanlan and J. H. Green, a copy of which — marked Exhibit "A," and also evidenced by said letter marked Exhibit B, were both executed at the same time, on the 27th of September, 1873. I also annex hereto the obligation executed by R. M. Scanlan and J. H. Green to Wm. T. Withers, marked "Exhibit C," in reference to a conditional fee to be received by said Withers, attorney-at-law, in case of success in collecting said notes. This last-named agreement was executed at the same time the others were, and it is part of the understanding. The whole thing was drawn up and signed in the office of Wm. T. Withers, attorney-at-law, at Lexington, Kentucky, and, as my attorney, he drew up all the papers and they are in his handwriting, but signed by me and by R. M. Scanlan and J. H. Green, as they purport; all done and executed on September 27th, 1873.

Answer to Int. 10th. A suit was brought by B. H. Lanier,
360 public administrator, in behalf of the estate of James C. Pickett on said notes and mortgage against Ezra Wheeler and Company and George Foster. My agents, R. M. Scanlan and J. H. Green, as I have since learned, employed J. W. Montgomery, attorney-at-law, to bring this suit in the district court, parish of Carroll. I was not kept advised from time to time of the progress of said suit. I never knew said suit was dismissed until I saw the original suit and judgment of the court last September.

Answer to Int. 11. The only knowledge I have about the suit and the decree dismissing it I obtained last September, when I saw the original judgment dismissing it on December 4th, 1875. The suit was dismissed at the instance of George Foster, public administrator, as the papers show. I have no other knowledge on the subject. I had the greatest confidence in the honor of R. M. Scanlan and J. H. Green in the collection of this claim, and I left the whole matter to them.

Answer to Int. 12. The only personal knowledge I have of the suit brought by B. H. Lanier, public administrator, is derived from a personal examination of the original suit last September. The record of that suit shows the facts enquired of. I have no personal knowledge beyond the record of that suit.

361 Answer to Int. 13. I first learned of the dismissal of the suit brought by B. H. Lanier, public administrator, in behalf of the estate of James C. Pickett against Ezra Wheeler & Co. and George Foster last September, when I examined that original suit. I was

never informed by George Foster, J. W. Montgomery, or B. H. Lanier, public administrator, or by any one else that said suit had been dismissed on December 4th, 1875, by George Foster, public administrator.

Answer to Int. 14. The reason that I did not cause said suit to be renewed or bring a new suit was that I did not know that the suit brought by B. H. Lanier, public administrator, in behalf of the estate of James C. Pickett had been dismissed. As before remarked, I learned the facts for the first time in September last, and I immediately took steps to employ counsel to bring this suit. The reason I was not advised by my agents, R. M. Scanlan and J. H. Green, as to the dismissal of said suit was that both died; I do not know the exact time. I did not know the name or address of the attorney they employed to enforce the claim. It was since last September that I learned that J. W. Montgomery was the lawyer employed, and from him my attorney, W. H. Pickett, procured all the papers
362 put in his hands by R. M. Scanlan and J. H. Green. He never wrote to me. I did not write to him because I did not know his name or address; besides I had confidence that R. M. Scanlan and J. H. Green would employ trustworthy counsel and that the interest of the estate would be protected. I did not know that George Foster had been appointed public administrator, and I did not know until last September that the suit had been dismissed.

Answer to Int. 15. I never knew George Foster until the first day of June, 1886, when he called at my office at Frankfort, Kentucky, and sought an interview with me in reference to the claim. He seemed to be wounded, spoke unkindly of my counsel, said the plantation involved in the case was worth only about thirteen or fourteen thousand dollars, &c. He spoke of his brother as a prominent attorney at Washington, D. C., and gave me to understand that if he lost the case it would be taken to the United States Supreme Court on appeal, though it would cost him fifteen hundred to two thousand dollars. I declined to discuss the case with him and referred him to my counsel.

363 Answer to Int. 16. I will state that I hold the office of superintendent of public instruction of Kentucky, and it was at my office that George Foster called to see me, as above stated. I am and have been for seven years greatly occupied with the duties of my office. At the time I put said notes in the hands of R. M. Scanlan and J. H. Green, September 27th, 1873, I was a professor in Kentucky university and also a minister of the gospel. My time was greatly occupied in literary and religious pursuits and I gave but little personal attention to this business. I got William T. Withers, attorney-at-law, to assist me in preparing the receipts and other documents pertaining to my agreement with R. M. Scanlan and J. H. Green. I advised on the subject with Mr. Withers as my attorney, and was satisfied that it was judicious and best to put the claim in the hands of R. M. Scanlan and J. H. Green, as I did. As I had but little money, I felt unable to incur the expense of counsel to prosecute the claim; besides, as my father's estate had but little money, I felt it was better to let R. M. Scanlan and J.

H. Green take the notes and employ a lawyer to take the case for a conditional fee or contingent fee. I did not go to Louisiana
364 myself, for I did not esteem it necessary; moreover, the duties of my profession were pressing and imperitive at that time and I had but little money. The original receipt for the notes, signed by R. M. Scanlan and J. H. Green, has been lost or mislaid. I have made diligent search for it and it has been out of my power to find it, but I have a certified copy which I annexed to my answer, marked "Exhibit A." I got from W. T. Withers since last September the original document, marked Exhibit "C," and have annexed it to my deposition because it was a part of the understanding between R. M. Scanlan and J. H. Green and myself, made and executed on September 27th, 1873, at the time I put the notes in their hands. I did not employ W. T. Withers as counsel to assist in the collection of these notes. I mearly consulted with him about sending the papers to Louisiana and employed him to draw up the receipt and other papers executed by myself and R. M. Scanlan and J. H. Green.

365 *Answers to Cross-Interrogatories.*

Answer to Int. 1. I sent the notes to Carroll parish, Louisiana, by R. M. Scanlan and J. H. Green, and I gave them a letter addressed "To (blank) —— ——, attorneys, proposing terms of employment and authorizing suit to be brought for the account of or for the benefit of the estate of James C. Pickett, of which estate I was administrator.

Answer to Int. 2. As before stated, I employed R. M. Scanlan and J. H. Green as my agents to take said notes and the original act of mortgage to Carroll parish, Louisiana, and to select counsel to institute proceedings to enforce the collection of said notes, for I did not know what attorney to employ, but I gave them a letter marked "Exhibit B," annexed to my interrogations-in-chief. That letter was written on the 27th of September, 1873, by my attorney, William T. Withers, and it was signed by me on that day and delivered by me to R. M. Scanlan and J. H. Green, to be given to the counsel they were authorized to select for me, together with the
366 notes and act of mortgage. Said letter contains the terms of employment and full authority for counsel to enforce the collection of said notes. When my attorney, W. H. Pickett, went to Lake Providence, Louisiana, about the 1st of November last, he obtained said letter marked Exhibit "B" from Judge J. W. Montgomery, together with the notes and act of mortgage, and, the same having come into my possession again, I have annexed it to my answer-in-chief, inasmuch as it evidences in part my agreement with R. M. Scanlan and J. H. Green. The original receipt given to me by R. M. Scanlan and J. H. Green has been lost or mislaid. I have not been able to find it, although diligent search has been made for it; therefore I am not now able to adduce the original manuscript. I have annexed to my answers-in-chief a certified copy of the notes and receipt signed by R. M. Scanlan and J. H. Green, and the copy

is marked "Exhibit A." It is an exact and true copy of the original as certified to by A. W. Overton, notary public, on October 22nd, 1885, at Frankfort, Kentucky. I make Exhibits A, B, and C parts of this answer.

Answer to Int. 3. I delivered possession of the notes and the original act of mortgage to R. M. Scanlan and J. H. Green, to be
367 taken to Carroll parish, Louisiana, and to be put in the hands of an attorney or of attorneys for collection. I also gave them the letter marked "Exhibit B," to be handed to such attorney or attorneys as they might select for me, giving authority to *to* proceed on the notes in behalf of the estate of James C. Pickett.

Answer to Int. 4. As before remarked, I employed W. H. Pickett as my attorney last fall to go to Lake Providence, Louisiana, and make a thourough investigation of matters in reference to the case, to ascertain where the notes and the act of mortgage were, to get possession of them, and to employ counsel to bring this suit. My attorney, W. H. Pickett, found the notes, the act of mortgage, and other papers pertaining to the case in the hands of Judge J. W. Montgomery. How long they had been in the hands of Judge J. W. Montgomery I have not been informed. My attorney, W. H. Pickett, got possession of them and immediately employed W. G. Wyly as attorney for myself and the other complainant to bring this suit. It was about the 1st of November that he got the papers from Judge J. W. Montgomery, and he put them in the hands of W. G. Wyly for collection.

368 Answer to Int. 5. I cannot say of my own knowledge in whose possession said notes have been ever since the dismissal of said suit. I did not know into whos- hands my agents, R. M. Scanlan and J. H. Green, had put the notes for collection. I employed W. H. Pickett, attorney-at-law, to investigate the matter, and, as before remarked, he went to Louisiana about the first of November last and ascertained that the notes were in the possession of Judge J. W. Montgomery. He got them from Judge J. W. Montgomery and put them in the hands of the counsel who brought the suit. The notes belonged to myself and John T. Pickett, the sole heirs of James C. Pickett; his rights as coheir vested in his son, Theodore John Pickett, who is his sole heir-at-law. But I was appointed administrator of the estate of James C. Pickett by the Fayette county court of Kentucky in May, 1873, and said notes passed into my hands as administrator, together with other assets of said estate, and I held said notes for collection in my capacity as administrator, and as such I put them in the hands of R. M. Scanlan and J. H. Green to be taken to Louisiana for collection in behalf of the estate of James C. Pickett.

Answer to Int. 6. The notes now belong to myself and the
369 other complainant, Theodore John Pickett. As before remarked, I inherited by the death of my father, James C. Pickett, in 1872, one undivided half of his estate, including said notes. My brother, the late John T. Pickett, inherited the other half of the estate, including said notes, and at his death Theodore John Pickett succeeded to all his rights, being his sole surviving

heir; but I was appoin- administrator of the estate of my father, James C. Pickett, in which capacity I have held said notes, and the other coheir never attempted to assume controll of the collection of said notes until last fall, when I learned for the first time the disaster to the suit instituted by B. H. Lanier, public administrator, in behalf of the estate of James C. Pickett. As soon as I learned of the fate of that suit I communicated the fact to Theodore John Pickett, and the result was that he took possession of his interest in said notes and joined me in employing the counsel who brought this suit.

Answer to Int. 7. From a personal inspection of the suit and from information received from W. H. Pickett, who went to Lake
370 Providence last fall and made an investigation of all the facts.

Answer to Int. 8. I have a written contract with my attorney, W. G. Wyly, in relation to the prosecution of this suit.

Answer to Int. 9. It is not a fact that I valued the claim in suit lightly. On the contrary, I regarded the claim a very valuable one when I employed W. G. Wyly to bring this suit. Myself and the co-complainant, Theodore John Pickett, employed W. G. Wyly to prosecute the suit and agreed to pay him a contingent fee of thirty-three and a third per cent. ($33\frac{1}{3}$) of the sum recovered, and we were to provide for the payment of the costs. W. G. Wyly did not assume to pay any of the costs.

Answer to Int. 10. I have no personal knowledge on the subject enquired of in this interrogatory, except I know that my father was very indulgent to his creditors, and he was a very old man, in his eightieth year at the time of his death, and he had been in fe-ble health for several years. I understood that he had been importuned for indulgence for the makers of said notes, and I account for the delay on
371 the ground stated. I have no positive information as to the date the mortgaged property purports to have been transferred or taken out of the hands of the original owners and mortgagors. I will add that after the notes came unto my possession as administrator on the estate of James C. Pickett on the 20th of May, 1873, I began to look around for an opportunity to send said notes to Louisiana for collection, and on the 27th of September, 1873, I succeeded in making arrangements with R. M. Scanlan and J. H. Green, and I gave them the notes to be taken to Carroll parish, Louisiana, and put in the hands of counsel for collection.

JOSEPH D. PICKET.

372 THEODORE JOHN PICKETT, a witness for complainants, being produced, sworn, and examined, deposeth and sayeth, in answer to the interrogatories and cross-interrogatories herewith filed, as follows:

Answer to 1st Int. To the 1st interrogatory: I am acquainted with both of the complainants, I being one of them and my uncle, Joseph Desha Pickett, being the other. I know none of the defendants.

2nd Int. Yes, I knew the late James C. Pickett. He was my grandfather.

3rd Int. He died July 10th, 1872. He left no *no* will. Joseph Desha Pickett was appointed administrator of his estate by the Fayette county court of Kentucky on May 20th, 1873.

4th Int. My father, John T. Pickett, and my uncle, Joseph Desha Pickett. They were the sons of the late James C. Pickett and his sole heirs-at-law. My father, John T. Pickett, died intestate, subsequent to the death of my grandfather, leaving no other child but myself, and I am twenty-seven years of age and his sole surviving heir.

373 5th. I knew that the estate of James C. Pickett had claims in Louisiana, and they are the claims upon which this suit is based, but I had no special knowledge of the same until last September. My uncle, Joseph D. Pickett, had charge of those claims in his capacity as administrator after the death of my grandfather. The claim was evidenced by the notes of A. M. Ricketts and N. J. Bell, one for $5,500, one for $6,000, and one for $6,500. They were all dated at Memphis, Tennessee, January 1st, 1866. They were secured subsequently by a mortgage or deed of trust on the Jonathan Morgan plantation, in the parish of Carroll, State of Louisiana.

6th Int. Yes; this suit was brought by myself and Joseph D. Pickett, we being the sole surviving heirs of the late James C. Pickett and the legal owners of the notes and deed of trust described in my last answer, and this suit is baced upon said notes and deed of trust.

7th Int. After the death of my grandfather, James C. Pickett, in 1872, said notes and deed of trust passed into the hands of Joseph D. Pickett, and he held them in his capacity as administrator
374 of James C. Pickett's estate. He was appointed administrator by the Fayette county court of Kentucky.

Int. 8th. I have described the notes. I have no personal knowledge as to what disposition in the way of attempting to collect said notes was made of them by Joseph D. Pickett, administrator. I have learned from him that they were sent to La. for collection soon after the death of my grandfather, but I have no personal knowledge on the subject.

Int. 9th. I have no personal knowledge of the matter inquired of in this interrogatory.

Int. 10th. I have no personal knowledge as to the matter inquired of in this interrogatory.

Int. 11th. I have no personal knowledge of the matter inquired of in this interrogatory. What I know I have learned since last September from Joseph D. Pickett.

Int. 12th. I have no personal knowledge in reference to the matter enquired of in this interrogatory. The first information I had upon the subject was from Joseph D. Pickett about one year ago. I left the whole affair with my uncle, Joseph D. Pickett, who
375 had been administrator of my grandfather's estate, and as such he took charge of said notes and deed of trust after the death of my grandfather.

Int. 13th. I was not informed by George Foster, J. W. Montgomery, B. H. Lanier, public administrator, or any one else that the suit instituted by Lanier, public administrator, in behalf of the estate of James C. Pickett had been dismissed on the 4th of December, 1875. I had no knowledge that said suit had been dismissed until last September, when I was advised by Joseph D. Pickett of said suit.

Int. 14th. I have no personal knowledge of the matter enquired of in this interrogatory, except that I knew that said notes had come into the hands of my uncle, Joseph D. Pickett, in his capacity as administrator of my grandfather's estate, and I believed that he would cause adequate proceedings to be taken to enforce the collection of said notes. The whole matter was in his hands after my grandfather's death, and I did not regard it as necessary to take personal supervision of the matter. I did not seek to renew the suit after it was dismissed because I did not know that the suit brought by B. H. Lanier, public administrator, in behalf of the estate of
376 James C. Pickett had been dismissed until I learned the fact from Joseph D. Pickett last September. I did not know that George Foster had been appointed to succeed B. H. Lanier as public administrator, nor was I ever informed that he had caused the suit to be dismissed which was brought in behalf of the estate of James C. Pickett until last September.

Int. 15th. I never saw George Foster, and have no information on the subject of this interrogatory.

Int. 16th. I know nothing more in reference to the matters enquired of in this interrogatory.

377 *Answer- to Cross-Interrogatories.*

Answer to cross-int. 1st. I have no personal knowledge of the matter enquired of in this interrogatory.

Int. 2nd. I have no personal knowledge of the matter enquired of in this interrogatory.

Int. 3rd. I did not deliver possession of the notes to any one. After the death of my grandfather they passed into the hands of my uncle, Joseph D. Pickett, in his capacity as administrator of the estate of James C. Pickett.

Int. 4th. I have never had personal possession of said notes until last November, when I caused them to be put in possession of my attorneys who have instituted this suit. They were obtained from the possession of Judge J. W. Montgomery, at Lake Providence, La., in November last by William H. Pickett, attorney-at-law, in my behalf, who put them in the hands of Judge W. G. Wyly for collection.

Int. 5th. I have no personal knowledge on the subject, except that said notes were found in the hand- of Judge J. W. Montgomery, at Lake Providence, La., last November and in my behalf were obtained by W. H. Pickett and put in the hands of my attor-
378 neys who have brought this suit, the notes belonging to myself and my uncle, Joseph D. Pickett, sole heirs-at-law of

the late James C. Pickett. Prior to that time—November last—I never sought to take personal possession and control of said notes because I believed my uncle, Joseph D. Pickett, as administrator, was proceeding to have said notes collected, and as distributee I expected to receive from him my share of the money collected on said notes.

Int. 6th. The notes belong now to myself and Joseph D. Pickett. We are the sole surviving heirs of the late James C. Pickett, and, of course, are the legal owners of his estate. Joseph D. Pickett and my father became legal owners immediately after the death of my grandfather, and on the death of my father I succeeded to his rights, being his sole heir. For the purpose of collecting these notes and other assets of the estate of James C. Pickett, my uncle, Joseph D. Pickett, was appointed administrator of the estate of James C. Pickett by the Fayette county court of Kentucky on the 20th of May, 1873. In his capacity as administrator he, of
379 course, had authority to cause the collection of said notes and I never sought to take personal control of my interest in said notes until last September, when I was advised of the misfortunes attending his efforts to cause the collection of said notes. As before remarked, last November was the first time I obtained personal controll of said notes and I caused them to be put into the hands of the attorneys who brought this suit.

Int. 7th. From William H. Pickett; he went to East Carroll parish and obtained the papers, investigated the facts, and in my behalf employed counsel to bring this suit in connection with my uncle, Joseph D. Pickett, who is a joint owner with me of said notes.

Int. 8th. Yes; I have a written contract with my attorney, W. G. Wyly, to prosecute the suit.

Int. 9th. No; I did not and do not now value the claim lightly; I employed W. G. Wyly to prosecute said suit on a contingent fee of 33⅓ per cent.; W. G. Wyly is not to pay the costs; Joseph D. Pickett and myself have provided for the costs, and the litigation is at our expense.

380 Int. 10. I have no personal knowledge of the matter enquired of except that my grandfather was a very old man; he was in his eightieth year at the time of his death in 1872, and he had been for several years in very feeble health; the matter may have been delayed on account of his extreme age and feeble health, or he may have been importuned for indulgence by the makers of the notes.

THEODORE JOHN PICKETT.

Also WILLIAM H. PICKETT, a witness, was produced, sworn, and examined on the part and behalf of the said complainants, and deposeth and saith, in answer to the interrogatories and cross-interrogatories herewith filed, as follows:

To the first interrogatory. I am acquainted with the complainants, Joseph D. Pickett and Theodore John Pickett; I also know the

defendants Mr. Scanlan and Mrs. Green; I do not know the other defendants.

To 2nd interrogatory. Yes.

To 3rd Intg. He died in 1872; he left no will; Joseph D. Pickett was appointed administrator for his estate by the Fayette county court of Kentucky.

381 To the 4th Intg. Joseph Desha Pickett and John T. Picket are the heirs of James C Pickett. John T. Pickett subsequently died, and Theodore John Pickett succeeded to his rights.

To 5th Intg. Yes; I know that Mrs. A. M. Ricketts and Mrs. N. J. Bell, of the parish of Carroll, State of Louisiana, were the makers of three promissory notes, dated at Memphis, January 1st, 1866, one for $5,500, one for $6,000, and one for $6,500, payable to James C. Pickett *on* order, secured by mortgage or deed of trust on the Jonathan Morgan plantation, in East Carroll parish, Louisiana.

To 6th Intg. Yes; I know the complainants Joseph Desha Pickett and Theodore John Pickett. The suit is founded on the notes described in my answers to the fifth interrogatory.

To the 7th Intg. On the death of James C. Pickett said notes passed into the hands of Joseph Desha Pickett, in the capacity of administrator on the estate of James C. Pickett. Joseph Desha Pickett was appointed administrator of the estate of James C. Picket by the county court of Fayette county, Kentucky.

382 To the 8th Intg. I was present at the interview between Joseph D. Pickett and R. M. Scanlan and John H. Green in September, 1873, which interview resulted in Green and Scanlan being selected to take said notes to Louisiana, and in behalf of Joseph D. Pickett, administrator, to put *to* same in the hands of counsel in Louisiana for collection. I have no personal knowledge as to the proceedings taken by the counsel in Louisiana, except in November last I went to the parish of East Carroll and examined the records and saw the suit which had been instituted by B. H. Lanier, public administrator, in behalf of the estate of James C. Pickett, which suit George Foster, public administrator, caused to be dismissed. There was an agreement in relation to the collection of said notes made by Joseph D. Pickett, administrator, and R. M. Scanlan and J. H. Green. It was in writing. The papers were drawn by General William T. Withers, at Lexington, Kentucky.

To 9th Intg. R. M. Scanlan and J. H. Green were selected by Joseph D. Pickett, administrator, to take said notes and original deed of trust to Louisiana, and they were to employ counsel

383 in behalf of said administrator to take proceedings to enforce the collection of said notes. This was in September, 1873, and Scanlan and Green executed to Joseph D. Pickett their receipt the*ir*for. It is not in my possession, and I cannot annex it.

To the 10th Intg. I have no personal knowledge of this interrogatory of the matter enquired of except as before stated. I went to the parish of Carroll in November, in 1885; examined the records and saw the suit instituted by B. H. Lanier, public administrator, in behalf of James C. Pickett's estate against Ezera Wheeler

& Company and George Foster, *as* which said suit George Foster, as public administrator, caused to be dismissed.

To the 11th Intg. As remarked in my last answer, I examined the records of the court in the parish of East Carroll last November, and all the information I have in reference to the suit of B. H. Lanier, public administrator, against Ezra Wheeler & Company and George Foster I obtained from examination of the record, and I have no personal knowledge of the matter except the information I derived as aforesaid.

To 12th Intg. I know nothing of my own knowledge
384 in reference to the matter inquired of except what I derived from an examination of the records of the district court of the parish of Carroll, now the parish of East Carroll.

To the 13th Intg. I first learned of the dismissal of the suit last fall, I think in the month of September, but I had no definite information until I visited the parish of East Carroll last November. I was never informed by George Foster, J. W. Montgomery, B. H. Lanier, public administrator, or any one else that said suit had been dismissed on the 4th of December, 1875. I had no information on the subject whatever until last September. About the first of November I was sent as the attorney of complainants to Lake Providence to make a thorough investigation of the matter, and I had authority to employ local counsel to take charge of the matter and bring suit in behalf of complainants, and I employed W. G. Wyly as counsel for complainants at Lake Providence about the second or third of November, 1885, which employment was approved and ratified by complainants.

To 14th Intg. I have no knowledge in reference to this interrogatory except what I learned from examination of the records,
385 as before stated. I was not employed as the attorney by complainants until last fall, when I undertook to investigate the matter and to see that competent local counsel should be employed to bring the suit.

To 15th Intg. No; I never saw George Foster and never had an interview with him.

To 16th Intg. When I was employed as attorney by complainants last fall to go to Louisiana and investigate the records, collect information concerning their claim, and employ counsel to bring this suit, my clients were unable to inform me where the original papers could be found. They did not know the name of the attorney at Lake Providence into whos- hands R. M. Scanlan and J. H. Green had put the claim for collection. On my way South, at Memphis, I met H. O. Clark, an acquaintance of mine, who formerly resided in the parish of Carroll. He informed me that before their death R. M. Scanlan and J. H. Green had selected Judge J. W. Montgomery as counsel in behalf of the estate of James C. Pickett to enforce the collection of said mortgage notes. This was the first information I had on the subject. I went to Lake Providence, met
386 Judge J. W. Montgomery, and I got from him the original notes and the original act of mortgage upon which this suit
— based, and I also got from him some other papers connected with

the case, especial-y the letter annexed to the testimony of Joseph D. Pickett, marked Exhibit B, which said letter was dated Lexington, Kentucky, September 27th, 1873. It was addressed: "To (blank), attorneys-at-law." The letter was in the handwriting of W. T. Withers, but signed by J. D. Pickett, administrator. This letter was part of the agreement between Joseph D. Picket, adm'r, and R. M. Scanlan and J. H. Green at the time he took their receipt for the claim. Not knowing what attorney might be selected in Carroll parish by R. M. Scanlan and J. H. Green, the letter was addressed: "To (blank), attorneys-at-law." After obtaining possession of the papers from Judge J. W. Montgomery, examining the records, and collecting information generally on the subject of the claim I went to the office of W. G. Wyly and employed him to bring this suit for complainants. Until I returned my clients, the complainants, never learned all the facts connected with the case. After my examination of the matter I was unable to give them exact information as
to the dismissal of the suit which B. H. Lanier, as public ad-
387 ministrator, had brought in behalf of the estate of James C.
Pickett, and as to the facts stated in the suit I know nothing further that may be of benefit or advantage to either of the litigants or that may be necessary to disclose.

Answers to Cross-Interrogatories.

To cross-intg. 1st. They were sent by R. M. Scanlan and J. H. Green for account of the estate of James C. Pickett.

To 2d cross-intg. R. M. Scanlan and J. H. Green were employed by Joseph D. Pickett, administrator, to take the mortgage notes to East Carroll parish, Louisiana, to place in the hands of competent local counsel to foreclose the same. There was a written agreement between Joseph D. Pickett, administrator, and R. M. Scanlan and J. H. Green. As I have neither original agreement nor a copy of the same, I cannot annex either hereto.

To 3rd cross-intg. I never had possession of the notes until the first of November last, at which time I delivered them to Judge W. G. Wyly at Lake Providence. They had been delivered by Joseph
D. Pickett, administrator, to R. M. Scanlan and J. H. Green
388 on the 27th of September, 1873, for the purpose of being taken
by them to Louisiana to be put in the hands of counsel for collection.

To 4th cross-intg. I received said notes from Judge J. W. Montgomery, at Lake Providence, on or about the first of November last.

To 5th cross-intg. I have no personal knowledge on the subject except as before stated. I was at Lake Providence about the first of November last. Ascertaining that Judge J. W. Montgomery then held the notes, I got them from him and placed them in the hands of the counsel who have brought this suit with a view to enforce the collection thereof. On the death of James C. Pickett the title vested in his heirs, Joseph D. Pickett and John T. Pickett. Subsequently John T. Pickett died and his succeeded to Theodore John Pickett, his sole-heir-at-law and one of the complainants in this

suit. Joseph D. Pickett was appointed administrator of the estate of James C. Pickett by the Fayette county court of Kentucky, and said notes passed into his hands for collection.

To 6th cross-intg. The notes now belong to the complain-
389 ants Joseph D. Pickett and Theodore John Pickett. Joseph D. Pickett acquired his share of said notes by inheritance from his father, who died in 1872, and Theodore John Pickett succeeded by the death of his father, John T. Pickett, to the heirship which accrued to him by the death of James C. Pickett in 1872.

To 7th cross-intg. I received information from the examination made by me of the records of the parish of Carroll and from the investigation of the matter relating to said claim in the fall of 1885, which I made as attorney for complainants.

To 8th cross-intg. The complainants have. I am not one of the complainants.

To 9th cross-intg. I am not one of the complainants. I was employed by them to go to the parish of Carroll last fall to take possession of the papers and employ counsel in behalf of complainants to prosecute this suit. The written agreement is in the possession of complainants. I am not aware that they value the claim lightly. W. G. Wyly, by the terms of the agreement, was to take a conditional fee of 33⅓ per cent. The costs were to be provided for by the complainants.

390–391 To 10th cross-intg. I have no personal knowledge of the matter enquired of in this interrogatory.

WILLIAM H. PICKETT.

Also W. T. Withers, being in Lexington, Kentucky, and notified to appear as a witness at this place in this cause, this day caused to be presented to me, as the examining officer, the medical certificate of Dr. J. L. Stockdell of said Withers' inability to attend at Frankfort, which certificate is herewith returned.

JOHN B. LINDSEY,
Notary Public, F. Co., Ky.

STATE OF KENTUCKY, *Franklin County,* } *sct:*

I, John B. Lindsey, a notary public in and for Franklin county, Kentucky, duly commissioned and qualified as such, do certify *as such do certify* that the foregoing depositions of Joseph D. Pickett, Theodore John Pickett, and William H. Pickett *was* taken before me at the time and place stated in the caption; that said witnesses were severally sworn before giving their depositions; that the depositions of Joseph D. Pickett and Theodore John Pickett were written and subscribed and read by them to me and in my presence, and the deposition of William H. Pickett was written & read by
392 me in his presence & he subscribed the same in my presence. The said Joseph D. Pickett and Theodore John Pickett, complainants, being witnesses, were present at their own examination, but not present at the examination of William H. Pickett.

Given under my official signature and notarial seal this 13th day of September, 1886.

JOHN B. LINDSEY,
Notary Public, Franklin Co., Ky.

STATE OF KENTUCKY, *Franklin County,* } *sct:*

I, N. B. Smith, clerk of the county court in and for the county aforesaid, do hereby certify that John B. Lindsey, before whom the foregoing depositions were taken, as appears from his certificate thereto, is and was at the time a notary public in and for Franklin county, Kentucky, duly commissioned and qualified and authorized by law to take depositions, and that his signature to the foregoing certificate is in his handwriting and said certificate is in due form.

Given under my official signature as clerk and the seal of said court this 14th day of September, A. D. 1886.

N. B. SMITH,
Clerk Franklin County Court of Kentucky.

393 I, R. A. Thompson, presiding judge of the Franklin county court of Kentucky, do hereby certify that the John B. Lindsey before whom the foregoing depositions were taken was at the time they were taken a notary public in and for said county and authorized thereto, and his certificate is in due form and his signature thereto is in his handwriting; and I further certify that the certification of the notarial character and qualifications of said notary by N. B. Smith is in due form, and that said Smithe is clerk of the Franklin county court and authorized to make said certificate, & his signature official-y annexed to said certificate is in his own handwriting.

Given under my official signature this 14 day of September, 1886.

R. A. THOMPSON,
Presiding Judge Franklin County Court, State of Kentucky.

Fee, $1.00.

I, N. B. Smithe, clerk of the Franklin county court of Kentucky, do hereby certify that R. A. Thompson, who has signed the foregoing certificate, was at the time and still is the presiding justice and judge of said court and that he is duly commissioned and qualified as such.

394 Given under my official signature and the seal of said court this 14th September, 1886.

[SEAL.] N. B. SMITH,
Clerk Franklin County Court of Kentucky.

Clerk's fee & seals, $2.00, paid.

Judge's fee	$1	
Co. clerk fee	2	
Notaries	6 99	
Total	9 99	Paid by comp'ts.

EXHIBIT "A."

Attorney-at-law and solicitor in chancery, Jordon's row, opp. court-house, Lexington, Ky., —— —, 187–.

$5,500.00. MEMPHIS, *Jan.* 1*st*, 1866.

One year after date we promice to pay to the order of James C. Pickett, Esq., five thousand five hundred dollars, value received, payable at Farmers' b'k, Frankfort, Ky.

A. M. RICKETTS.
N. J. BELL.

Indorsed: Jan. 16, 1866. *Ne varietur.* J. W. Wescot, com'r for identification of this note.

$6,000.00. MEMPHIS, TENN., *Jan.* 1*st*, 1866.

Two years after date we promice to pay to the order of James C. Pickett, Esq., six thousand dollars, value received, payable at Farmers' b'k, Frankfort, Ky.

A. M. RICKETTS.
N. J. BELL.

Same endorsement as on first note above.

395 $6,500.00. MEMPHIS, TENN., *Jan.* 1*st*, 1866.

Three years after date we promice to pay to the order of James C. Pickett, Esq., six thousand five hundred dollars, value received, payable at Farmers' b'k, Frankfort, Ky.

A. M. RICKETTS.
N. J. BELL. [SEAL.]

Same endorsement as on first note above.

LEXINGTON, KY., *September* 27*th*, 1873.

Received of Jos. D. Pickett, administrator of the estate of James C. Pickett, deceased, the originals of the three notes, exact copies of which are on the other side of this sheet of paper, which we take to place in the hands of attorneys on the terms proposed by said Jos. D. Pickett in a letter sent by us of this date.

We have also received of Jos. D. Pickett, adm'r as af's'd, the original deed of trust or mortgage executed to secure the payment of said three notes, & also certain letters, papers, & memoranda connected with said claims.

Should the att'ys in Louisiana take the claims for collection for less than one-third of the whole am't collected we agree to pay to Jos. D. Pickett, adm'r, one-half of the difference between the one-third and the amount for which the attorneys may actual-y agree to undertake the collection of the claims.

R. M. SCANLAN.
J. H. GREEN.

396 I certify that the foregoing is a true copy of the original in the possession of J. D. Picket, who personal-y came to me.
Frankfort, Ky., Oct. 22nd, 1885.

S. W. OVERTON,
Notary Public.

EXHIBIT "A," with Deposition of Joseph D. Pickett. John B. Lindsey, Notary Public, F. Co., Ky.

William T. Withers, attorney-at-law and solicitor in chancery, Jordon's row, opp. court-house.

LEXINGTON, KY., *September 27th*, 1873.

DEAR SIRS: As administrator of the estate of my father, James C. Picket, late deceased, I desire to place in your hands for collection three mortgage notes of Mrs. Bell and Ricketts, amounting in the ag-regate to eighteen thousand dollars, without interest. In doing so I propose to allow you as compensation two-thirds of what-
397 ever amount you may recover, provided the estate I represent shall not be subjected to any expense whatever, either for court costs, contingent fees, or any other charges whatever; but I am to receive as administrator of said estate one-third of the gross amount that may be received.

I enclose herewith all the papers connected with the case, and the institution of legal proceedings or any action by you will be taken and considered by me as an acceptance on your part of the terms proposed.

Yours very respectfully, J. D. PICKETT,
Administrator.

To —— ——, attorneys-at-law.

EXHIBIT "B," Filed with the Deposition of Joseph D. Pickett. John B. Lindsey, Notary Public, F. Co., Ky.

We bind and obligate ourselves to pay to Wm. T. Withers two hundred & fifty dollars, provided we succeed in recovering either of three mortgage notes of Mrs. Ricketts & Bell payable to James C. Pickett, late deceased; which said notes have this day been sent by Jos. D. Picket, adm'r of the estate of James C. Picket, de-
398 ceased, by our hands to attorneys in Louisiana for collection.

The said sum of $250 is one-half the contingent fee agreed to be paid by J. D. Pickett, adm'r as af'd, to said W. T. Withers for legal advice and assistance in reference to the above-mentioned claim.

R. M. SCANLAN.
J. H. GREEN.

Agreement of Green & Scanlon to pay $250 in case of Pickett, ad'm'r, *vs.* Foster.

EXHIBIT "C," Filed with Deposition of Joseph D. Pickett. John B. Lindsey, Notary Public, Franklin Co., Ky.

LEXINGTON, KY., *Sept. 13th*, 1886.

I hereby certify that I am the family physician of Gen'l W. T. Withers, of this county, and that his physical condition is such that it would be unsafe for him to go to Frankfort. I have advised him to keep quiet at home.

J. L. STOCKDELL, M. D.

399 [Endorsed:] No. 110. Filed in evidence on behalf of complainants July 19th, 1887. J. B. Beattie, d'y cl'k. Opened and filed October 6, 1886. J. B. Beattie, d'y cl'k.

400 *Interrogatories Propounded to J. W. Montgomery.*

United States Circuit Court, Fifth Circuit, Western District of Louisiana.

HEIRS J. C. PICKETT
vs.
GEO. FOSTER *et als.*
} No. 110. In Equity.

Interrogatories to be propounded to J. W. Montgomery, a resident of East Carroll p'h, La., a material and competent witness in behalf of the complainants in the above entitled and numbered suit, whos- testimony is to be read on the trial of said suit.

Intg. 1st. What is your profession? Where did you reside since 1866?

Intg. 2nd. Did you have for collection any note or notes in favor of J. C. Pickett? If yea, against whom were said notes?

Intg. 3rd. Did you or did you not file suit on said note or notes? If yea, in whos- name was the suit brought? If in the name of Mr. Lanier, public administrator, why was it so brought?

Intg. 4th. Did you or did you not demand payment of said notes of the makers prior to instituting suit on the notes? If yea, did or did not either of the makers of said notes acknowledge their correctness? Did or did not either of said makers or both of them
401 promise to pay said note? If yea, when was that? Was it before or after the institution of the suit aforesaid?

Intg. 5th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause? If eye, set forth the same fully and at large in your answer.

JNO. T. LUDELING,
Solicitor for Complainants.

Cross-Interrogatories.

X Intg. 1st. If, in answer to second interrogatory-in-chief, you answer that you had such notes as are described, state from whom you received them and when.

X Intg. 2nd. Did you annex said notes to the suit brought in the name of Lanier, public administrator? If nay, why did you not do so?

X Intg. 3rd. Were you in possession of said notes at the time of the discontinuance of the Lanier suit? If yea, how long after the discontinuance of that suit did you return them? To whom did you return the notes and when?

X Intg. 4th. Did you ever demand or request that George Foster prosecute the suit instituted by Lanier?

402 X Intg. 5th. Were the notes ever under Foster's possession or control? If so, who gave them to him and when?

C. J. & J. S. BOATNER, *Att'ys.*

A true copy.
Attest:

[SEAL.] J. B. BEATTIE, *D'y Cl'k.*

403 Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for the Western District of Louisiana.

To William Rous, Esqr., of East Carroll parish, Louisiana:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you J. W. Montgomery, Esqr., of East Carroll, Louisiana, and him duly examine on the annexed interrogatories on oath touching and concerning certain matters and things in a case now depending in the said court wherein Heirs of J. C. Picket are plaintiffs and George Foster *et als.* are defendants, and the same examinations, so taken and reduced to writing, you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Monroe, Louisiana, this 15th day of March, anno Domini 188–, and the 111th year of the Independence of the United States of America.

J. B. BEATTIE, *D'y Clerk.*

[Endorsed:] United States circuit court. No. 110. Heirs J. C. Pickett *vs.* George Foster *et als.* Commission.

404 *Answers of J. W. Montgomery.*

STATE OF LOUISIANA, }
Parish of East Carroll. }

Be it known that on the 28th day of May, A. D. 1887, I, Wm. Rous, clerk of the 8th district court and *ex officio* notary public in and for said parish, duly commissioned and qualified, did cause to come before me, at the clerk's office, in the town of Lake Providence and State of Louisiana, in obedience to the annexed commission, issued from the United States circuit court, fifth circuit, western district of Louisiana, in the suit styled Heirs of J. C. Pickett *vs.* George Foster *et als.*, No. 110, in equity, the witness J. W. Montgomery, and, after being first duly sworn according to law, the said J. W. MONTGOMERY testified in answer to the annexed interrogatories and cross-interrogatories as follows, to wit, his answers being reduced to writing by me:

To the first interrogatory the witness answered: I am an attorney-at-law and in 1866 I resided in this parish—in fact, have resided in this parish since the early part of the year 1856.

To the second interrogatory the witness answered as fol-
405 lows: I had three notes in favor of J. C. Pickett for collection and they were made by Mrs. A. M. Ricketts and Mrs. Narcissa Bell, and upon which I filed suit in the district court of this parish, in which suit said notes are fully set forth.

To the third interrogatory the witness answered: I did file suit on said notes as above stated. The suit was filed in the name of B. H. Lanier, public administrator for this parish. The holder of the notes was dead and it was necessary that his estate should be represented. At first I thought of provoking the appointment of an administrator, but did not do so because, it being my construction of the law that the public administrator, having the preference, could defeat my application, therefore I requested Lanier in his official capacity to represent the estate, and that he would take charge of the suit. I contemplated bringing — on those notes. He, without hesitation, agreed to do so and instructed me to file the suit in his name, as public administrator, which I accordingly did, as will fully appear from the original papers filed in that behalf. So long as Lanier held the office of public administrator I represented him in said suit. He was my client and controlled the
406 proceedings. When he was superceded by the appointment of George Foster to be public administrator he ceased to control or to have anything further to do with the suit.

Mr. Foster had a standing attorney or attorneys here who represented him in all legal proceedings.

The first I knew of Foster's appointment to that office was the dismissal of the suit shown by the judgment rendered by the court; that circumstance first informed me that he had been appointed. Had I known in due time of his official attitude I certainly should have taken steps to protect the holder of the notes from ad-

verse proceedings. After Foster's appointment he never conferred with me about the suit in any way whatever, but consulted, I presume, his own attorneys as to his proceedings. He was aware of the existence of the suit because he had been made a party thereto by supplemental petition.

To the fourth interrogatory the witness answered: I did not demand payment of the makers of said notes before filing suit. I had for some time been their legal adviser, and was often consulted by them as to their legal rights in other matters. Some short
407 time, a year or two, before filing this suit they had talked to me about this debt due Pickett (who was a connection of one of the ladies) and they expressed their anxiety about its settlement and of their inability to do so. They certainly, if not in so many words, yet in substance, acknowledged the existence of the debt evidenced by the notes refer-ed to. I do not remember the precise language they used, but the substance only, as above detailed. I do not remember that they or either of them promised in so many words to pay the notes. I was not authorized to receive or accept such a promise at that time, but they talked about them and expressed their anxiety about their inability to pay them and of their wish to settle them to the satisfaction of the holder. As before stated, these conversations were previous to the institution of the suit, a year at least, if not two years, and were had principally with Mrs. Ricketts, but in the presence of Mrs. Bell. Mrs. Ricketts, through her marriage, was a connection of Picketts, the holder of the notes refer-ed to, and she expressed herself warmly attached to him
408 and under great obligations for the loan of the money for which the notes were given, as I understood from them both.

To the 5th interrogatory the witness answered: I can call to mind nothing further to answer under this general interrogatory and have nothing further to say, except to repeat under this general interrogatory all my previous answers as answers hereto.

To the first cross-interrogatory the witness answered: I received them from the hands of R. M. Scanlan. He handed them to me in a large envelope with a letter from F. M. Goodrich or the house of Johnson & Goodrich, commission merchants, of New Orleans. He or his house had received them from Kentucky to be forwarded. That envelope, with the notes inclosed and other contents, I handed to a young attorney from Indianapolis, who represented the heirs of Pickett.

I did not examine the package on handing it to him except to see that the notes were in it. I am now informed that I handed to him the contract with me for my fees. I suppose I had for-
409 gotten it, otherwise I should not have handed it over to him. I cannot state positively when I received the notes, but that it was a short time before the filing of the suit. The letter from Goodrich enclosed in the envelope will show the precise date.

To the second cross-interrogatory the witness answered: I did not annex said notes to the petition. It was not an invariable custom with me to do so, especially on account of the extreme carelessness in the clerk's office, previous to or about that time many valuable

papers having been mislaid or lost; at any rate, had disappeared from the records and have not to this time been found.

To the 3rd cross-interrogatory the witness answered: I was in possession of the notes when the suit was dismissed and I retained them until delivered to Mr. Pickett, of Indianapolis, as detailed in my answer to first X question.

I delivered them to him a short time before the suit was filed in the Federal court at Monroe. The precise date I do not remember.

410 To the fourth cross-interrogatory the witness answered: I did not demand or request George Foster to prosecutee the suit instituted because, as stated in my answer to the third interrogatory-in-chief, the first intimation I had of his appointment to the office was the dismissal of the suit, to the best of my remembrance.

To the 5th cross-interrogatory the witness answered: The notes were never in the actual possession of George Foster nor did he have any control of the suit filed on them after he became administrator and the real plaintiff. As he controlled the suit in which he was plaintiff, it may be a legal question how far he controlled the notes—a question I do not desire to express an opinion upon, but leave to the better opinion of his honor the judge.

J. W. MONTGOMERY.

Sworn to and subscribed before me this 28th day of May, A. D. 1887.

Witness my hand and seal of office this date above written.

[SEAL.] WM. ROUS,
Clerk 8th District Court.

411 [Endorsed:] No. 110. Heirs J. C. Pickett *vs.* Geo. Foster *et als.* Deposition of J. W. Montgomery. Filed in evidence on behalf of complainants July 19th, 1887. J. B. Beattie, d'y cl'k. Opened and filed June 6th, 1887. J. B. Beattie, d'y cl'k.

412 *Interrogatories to W. G. Wyly.*

U. S. Circuit Court, Western District of La., Holding Session at Monroe. In Equity.

HEIRS J. C. PICKETT
vs.
GEORGE FOSTER *et al.*

Interrogatories propounded on behalf of complainants to W. G. Wyly, a witness residing in East Carroll parish, La.

Intg. 1st. Where do you reside and what is your occupation?

Intg. 2nd. Do you know the defendant George Foster, and how long have you known him?

Intg. 3rd. Where does he reside and what is his occupation and what has been his occupation since you have known him?

Intg. 4th. If you say he has been engaged in business as a planter

state what plantation he has occupied and cultivated and how long.

Intg. 5th. If you say he has been a planter, cultivating that plantation know as the Jonathan Morgan place or the "Pecan Grove" plantation, state how long he has occupied and cultivated said plantation and what has been the character of his possession, as well as you can judge from his conduct and administration thereof.

413 Intg. 6th. Do you own a plantation in the neighborhood of the Jonathan Morgan place, and did you ever have personal knowledge as to who dominated said Jonathan Morgan plantation?

Intg. 7th. If you say that George Foster had charge of said plantation state for how long and whether he seemed to act as owner or merely as a manager or agent for some other person, and state where he resides now and upon what plantation he makes his home.

Intg. 8th. Do you know or can you state any other matter or thing material to the issue of this case or which may be of benefit or advantage either to complainants or respondents? If so, state all you may know in reference to the matters at issue as fully and at large as if you were specially interrogated thereto.

JOHN T. LUDELING,
W. G. WYLY, *Solicitors.*

A true copy.
Attest:
[SEAL.] J. B. BEATTIE, *D'y Cl'k.*

The 5th, 6th, & 7th interrogations are objected to as leading & as eliciting the opinions of the witness.

This objection to apply to the interrogations to both witness.

C. J. & J. S. BOATNER, *Solicitors.*

414 Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for the Western District of Louisiana.

To Chas. R. Egelly, U. S. commissioner, Lake Providence, La.:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you Judge W. G. Wyly, of East Carroll parish, La., and him duly examine on the annexed interrogatories on oath touching and concerning certain matters and things in a case now depending in the said court wherein Heirs J. C. Pickett are plaintiffs and George Foster *et als.* are defendants, and the same examinations so taken and reduced to writing you certify under your hand and seal and send enclosed to this court without delay to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Monroe, Louisi-

ana, this 20th day of May, anno Domini 1887, and the 111th year of the Independence of the United States of America.

J. B. BEATTIE, *D'y Clerk.*

[Endorsed:] United States circuit court. No. 110. Heirs J. C. Pickett *vs.* George Foster *et als.* Commission.

415 *Answers of W. G. Wyly.*

UNITED STATES OF AMERICA.

STATE OF LOUISIANA,
Parish of East Carroll, Western District of Louisiana.

Circuit Court of the U. S., 5th Circuit, Western District of La.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et als.* } 110.

Be it known and remembered that on this the 31st day of May, A. D. 1887, I, Chas. R. Egelly, U. S. commissioner of the circuit court of the United States in and for the western district of Louisiana, duly commissioned, appointed, and qualified and specially commissioned for the purpose hereinafter named, authorizing and requireing me to take the deposition of William G. Wyly, a witness for the complainants herein, which when reduced to writing is to be used and read in evidence on trial of a certain cause now pending in the United States circuit court of the western district of Louisiana, styled Heirs of J. C. Pickett *vs.* George Foster *et als.*, # 110, wherein the said Heirs of J. C. Pickett are complainants and George Foster *et als.* defendants, I, the said commissioner, did on the 31st day of May, 1887, cause to appear before me at my office,
416 in the town of Lake Providence, La., in the western district thereof, between the hours of 10 & 12 o'clock of said day, — to be by me examined, and, the witness being by me duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth to the interrogatories to him to be by me propounded, I proceeded to reduce to writing his answers thereto seriatim in words and figures as follows, to wit:

To interrogatory 1st witness answers and says: I reside in the parish of East Carroll, and my occupation is that of a lawyer and a planter.

To interrogatory 2nd witness answers and says: I have known George Foster for 12 or 14 years.

To interrogatory 3rd witness answers and says: He resides upon the "Pecan Grove" or Jonathan Morgan plantation, in East Carroll parrish, La., and he has pursued the occupation of a planter since I have known him.

To interrogatory 4th witness answers and says: He has occupied and cultivated the Pecan Grove or Jonathan Morgan place since I

have known him. Since the litigation has been instituted I
417 have heard that the business of that plantation has been carried on in the name of I. P. Alexander, the son-in-law of George Foster; but he still occupies the plantation with his family.

To Intg. 5th witness answers and says: He has occupied and cultivated the plantation ever since I have known him, and, up to the time this suit was instituted, the character of his possession seemed to be that of an owner. He dominated the property in every respect as owner. His conduct throughout in reference to the management of said plantation has been similar to that of the proprietors of other plantations.

To Intg. 6th witness answers and says: Yes; I have often seen George Foster on the Jonathan Morgan place, and from my personal observation he seemed to control the property in every respect as owner. I have not been on the place since this suit has been filed, but have heard that the business is now conducted in the name of I. P. Alexander, son-in-law of George Foster.

To Intg. 7th witness answers and says: This interrogatory is answered in my previous answers. In all my observations George Foster seemed to act and control the plantation as owner.

418 To Intg. 8th witness answers and says: Notwithstanding the paper titles have at times been in the names of other parties, as far as observation extends George Foster has actual-y dominated the property as owner.

Until the last few years I have often been on the Jonathan Morgan plantation; often talked with George Foster about its affairs; have often seen him controlling the business, and from his conversation and conduct he seemed to be dominating the property as owner.

I have never known Ezra Wheeler or W. A. Gwyn or any one else to exercise proprietary rights over the Jonathan Morgan plantation. George Foster alone has dominated that property since I have known him.

Mr. I. P. Alexander has been the manager for his father-in-law, George Foster, until about the time this suit was instituted. Since then I have not visited the plantation, but I have heard that its affairs are conducted in the name of I. P. Alexander, son-in-law of George Foster. I own the Raleigh plantation, adjoining the Jonathan Morgan place, and until the last few years was on intimate terms of friendship with George Foster and his family.

W. G. WYLY.

419 Sworn to and subscribed before me this 31st day of May, A. D. 1887.

[SEAL.] CHAS. R. EGELLY,
U. S. Commissioner.

And after having so sworn the said witness and reduced to writing his answers to the interrogatories to him propounded, which I caused him to sign at the bottom of each page, as appears herein, *and* I, the said commissioner, do hereby certify that the said witness by me

examined was of sound mind and lawful age; that I am not attorney nor of counsel to either the complainant- or defendant- to this controversy, nor am I in any manner interested in the event of said suit.

In testamony whereof I have hereunto signed these presence and affixed my official seal, at my office, in the town of Lake Providence, parish of East Carroll, La., in the western district thereof, this 31st day of May, A. D. 1887.

[SEAL.] CHAS. R. EGELLY,
U. S. Commissioner.

420 [Endorsed:] No. 110. U. S. circuit court, 5 circuit, western district of La. Heirs of J. C. Pickett *vs.* George Foster *et al.* Deposition of W. G. Wyly, witness for plaintiffs. Received in office June 1st, 1887. Opened and filed June 30th, 1887. J. B. Beattie, d'y cl'k. Chas. R. Egelly, commissioner. Filed in evidence on behalf of complainants July 19th, 1887. J. B. Beattie, d'y cl'k.

421 *Interrogatories Propounded to J. S. Thompkins.*

U. S. Circuit Court, 5th Circuit, Western District of Louisiana In Equity.

HEIRS J. C. PICKETT
vs.
GEORGE FOSTER *et als.* } No. 110.

Interrogatories propounded to Jessy D. Thompkins, a witness on behalf of complainants.

1st. What is your age, occupation, and place of residence? If in the parish of East Carroll state how long you have resided in said parish.

2d. Do you know the defendant George Foster and how long have you known him?

3rd. Where does he reside and what is his occupation and has been his occupation since you have known him?

4th. If you say he has been engaged in business as a planter at any time since you have known him state what plantation he has occupied and cultivated.

5th. If you say that he has occupied and cultivated that plantation known as the Jonathan Morgan place or the Pecan Grove plantation, state how long he has occupied and cultivated said plantation and what has been the character of his possession and what control has he exercised over the place.

422 6th. Did you ever reside in *in* the immediate neighborhood of that plantation, and did you ever have personal observation and knowledge as to who dominated or controlled it as owner; if so, on what place did you reside, how near was it to that plantation, and during what years did you reside in the immediate neighborhood of said plantation?

7th. If you say you resided in the immediate neighborhood of that plantation will you state all you know as to how that plantation was controlled and who supervised and directed its affairs as owner, and state generally all you may know about the management of said plantation since you have known George Foster?

8th. If you say that George Foster has been in charge of said plantation state whether he seemed to act in the capacity of an absolute owner or wheather *whether* he seemed to manage said plantation as agent for other persons. If you say he exercised acts of ownership over the property will you mention any matters that you now remember that induced you to believe or infer that he was acting as owner?

9th. This suit was brought in December, 1885. Will you
423 state whether or not the management and controll of George Foster continued down to that period to be of the same c-arachter as it was when you first gained personal knowledge as to the character of his possession of said plantation?

10th. Do you know or can you state any other matter or thing material to the issue of said cause or which may be of benefit or advantage either to the complainants or the respondents? If so, state fully and at large all you may know in reference to the subject or matters at issue as if you were specially interrogated thereto.

(Signed) W. G. WYLY, *Solicitor.*

A true copy.
Attest: J. B. BEATTIE, *D'y Cl'k.*

N. B. for defendants:

Solicitor makes same objections to that made in interrogatories propounded to witness W. G. Wyly.

424 Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for the Western District of Louisiana.

To Charles R. Egelly, Esqr., U. S. com'r, Lake Providence, Louisiana:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you Jesse D. Tompkins, of East Carroll parish, Louisiana, and him duly examine on the annexed interrogatories on oath touching and concerning certain matters and things in a case now depending in the said court wherein Heirs J. C. Pickett are plaintiffs and George Foster *et als.* are defendants, and the same examinations, so taken and reduced to writing, you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Monroe, Louisiana,

this 20th day of May, anno Domini 1887, and the 111th year of the Independence of the United States of America.

J. B. BEATTIE, *D'y Clerk.*

[Endorsed:] United States circuit court. No. 110. Heirs J. C. Pickett *vs.* George Foster *et als.* Commission.

425 *Answers of J. D. Thompkins.*

UNITED STATES OF AMERICA,
State of Louisiana, Parish of East Carroll.

U. S. Circuit Court, 5th Circuit, Western Dist. of Louisiana. In Equity.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et als.* } No. 100.

Be it known and remembered that on this the 27th day of May, A. D. 1887, I, Chas. R. Egelly, U. S. commissioner of the circuit court of the United States in and for the fifth circuit, in the western district of Louisiana, duly commissioned and qualified, did by virtue of the several acts of Congress regulating the taking of testamony in civil causes and by virtue of a special commission to me issued and dated at the city of Monroe, La., on the 20th day of May, A. D. 1887, from the hon. 5th circuit court of the United States for the western district of Louisiana, authorizing and requesting me to take the deposition of J. D. Tompkins, a witness on the part of complainants, which evidence, when so taken and reduced by me to writing, is to be read in evidence in trial of the cause now pending in the U. S. circuit court, 5th circuit of the western district of Louisiana, in which the Heirs of J. C. Pickett are complainants and George Foster *et als.* defendants, I caused the witness J. D. Tompkins to appear
426 before me at my office, in the town of Lake Providence, parish of East Carroll, in the western district of Louisiana, between the hours of 12 o'clock m. and 2 o'clock p. m. of said day to be by me examined, and, being by me duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth to the interrogatories to him to be propounded in said cause so pending, I proceeded to reduce to writing seriatim his answers thereto in words and figures as follows, to wit:

To interrogatory 1st witness answers and says: I am 37 years of age; my occupation is that of a planter, and my residence is in East Carroll parish, where I have resided about 32 years.

To interrogatory 2nd witness answers and says: I am acquainted with the defendant Geo. Foster and have known him for twelve years.

To interrogatory 3rd witness answers and says: He resides in the lower part of East Carroll parish, and his occupation has been that of a planter ever since I have known him, and for two — kept a plantation store on the place.

427 To interrogatory 4th witness answers and says: He has occupied and cultivated the plantation in this parish of East Carroll known as Pecan Grove for 8 years to my personal knowledge.

J. D. TOMPKINS.

To interrogatory fifth witness answers and says: The defendant Foster has occupied and cultivated the Pecan Grove plantation, as I have stated in my answer to interrogatory 4th. I can state positively for the years 1875, 1876, 1877, 1878, 1879, 1880, and 1881, and during those years he had absolute control of said plantation as proprietor thereo-.

To interrogatory 6th witness answers and says: I resided on the adjoining plantation during the years 1879, 1880, & 1881, and during those three years know from business relations with said Foster that he was sole proprietor of said Pecan Grove plantation.

To Int. 7th witness answers and says: I know now it was controlled from personal observation as well as direct intercourse with the said Foster and his tenapts, and was satisfied that he was the owner of said plantation.

To interrogatory 8th witness answers and says: He seemed
428 to act in the capacity of an absolute owner of said plantation and not as manager or agent for some other person.

Being a neighbor of his, I had frequent conversations with him concerning his *his* plantation, the exact purport of which I cannot remember, as it has been some time since, but do remember his telling me about what he intended doing with it to make it more profitable to him. For instance, one part of said plantation he intended for cotton and corn and part for a pecan orchard and another part for raising stock. He told me he was going to get him a Kentucky jack and cross him on mustang mares and rais- mules on that portion of said plantation set aside for a pasture. He also told me that he intended cutting timber on what is known as Wild Lands, being — portion of said Pecan Grove plantation, and he did so and rafted out a large number of logs, which he disposed of and sold. In 1875 & 1876 I was deputy tax collector of this parish (then Carroll) and Foster paid me in June, 1875, the taxes due on said plantation for 1874 by his draft on Foster, Gwyn & Co., I think, and asked me at the same time to stay the collection of *of* the taxes due by him on said plantation until fall, which I declined
429 to do. He also paid me the taxes of 1875 in the same manner, at a different time of the year in 1876, and I was satisfied and believed from the conversations had and my personal observations that he was the owner of said plantation and manager and not agent for anybody.

To Int. 9th witness answers and says: I can only state positively in regard to his ownership and control of said plantation for the years mentioned by me, to wit, 1875, 1876, 1877, 1878, 1879, 1880, & 1881, but believe in 1882 the property was transferred to his son-in-law, J. P. Alexander, although this from no personal knowledge.

To Int. 10th witness answers and says: I have stated all I can

remember in my several answers to the interrogatories propounded to me in chief that might be of benefit or advantage to either the complainants or defendants in this case.

J. D. TOMPKINS.

Sworn to and subscribed before me on this the 27th day of May, A. D. 1887.

CHAS. R. EGELLY,
[SEAL.] *U. S. Commissioner and Special Commissioner.*

And after having so sworn the said witness I caused him
430 to sign and subscribe his name hereto as appears herein on the day and date and between the hours therein stated, and I, the said commissioner, do hereby certify that the said witness by me examined was of sound mind and of lawful age, and that all erasures and interlineations were made by me, commissioner, on the pages where same may appear before obtaining the signatures thereto, and I do further certify that I am not related to nor am I of counsel or attorney for either of the parties to the suit in controversy or in any way interested in the event of said suit.

In testamony whereof I have hereunto signed these presents and affixed my official seal, at my office, in the town of Lake
[SEAL.] Providence, in the western district of Louisiana, on this the 27th day of May, A. D. 1887.

CHAS. R. EGELLY, *Commissioner.*

Extract of Minutes.

WEDNESDAY, *July 20th*, 1887.

Court met pursuant to adjournment.

Present: His hon. Aleck Boarman, dist. judge, presiding.

HEIRS J. C. PICKETT
vs.
GEORGE FOSTER *et al.* } No. 110.

This cause came on again to be heard.

431 *Defendants' Note of Evidence.*

United States Circuit Court, Western District of Louisiana.

HEIRS OF J. C. PICKETT
vs.
GEO. FOSTER *et al.* } No. 110.

Notes of evidence offered on behalf of defendant George Foster.

1st. Testimony of Geo. Foster taken by commission, together with the exhibits annexed thereto.

2nd. The testamony of E. J. Delony taken under commission.

3rd. Certificate of Wm. Rous, clerk of the dist. court of East Carroll parish, that no inventory of the estate of J. C. Pickett was ever made nor letters of administration issued.

4th. Copy of deed of trust from Mrs. Ricketts & Mrs. Bell to Pickett showing cancellation of registry on 19 Dec., 1868.

5th. Articles of agreement between Foster & Gwyn & Mrs. A. M. Scanlan, under date 10th Dec., 1872.

6th. Act of mortgage from Mrs. A. M. Scanlan to Foster &
432 Gwyn; date, May 23rd, 1870.

7th. Acts of mortgage from J. H. Green to Foster & Gwyn.

Note of evidence for Mrs. Foster.

1st. Copy of last will and testament of Mrs. I. G. Putnam.

2nd. Her own testimony.

C. J. & J. S. BOATNER, *Solicitors.*

Endorsed: No. 110. Heirs of J. C. Pickett *vs.* George Foster *et al.* Defendants' note of evidence. Filed July 20th, 1887. J. B. Beattie, d'y cl'k.

433 *Interrogatories Propounded to Mrs. M. J. Foster.*

U. S. Circuit Court, Western District of Louisiana.

HEIRS J. C. PICKETT
vs.
GEORGE FOSTER *et al.* } No. 110.

Interrogatories propounded to Mrs. M. J. Foster, a witness for the defendant-, the answers to which when taken under oath are to be read in evidence in behalf of defendants on trial of this case.

1st. Are you one of the defendants herein & are you wife of George Foster, also defendant herein?

2nd. If you have answered that you are wife of George Foster, please state when you were married to him.

3rd. State whether or not you had any money or means of your own at the time of your marriage or acquired any afterwards. If yea, please state how much you so had or acquired, the source from which it was derived, & what disposition you made of it after it came to your possession.

4th. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue
434 in this case or either of them or that may be material to — subject of this your examination or the matter in question in this case? If yea, set forth the same fully and at large in your answer.

C. J. & J. S. BOATNER, *Solicitors.*

Interrogatories Propounded to Geo. Foster.

U. S. Circuit Court, Western District of Louisiana.

HEIRS J. C. PICKETT
vs.
GEORGE FOSTER *et al.* } No. 110.

Interrogatories propounded by defendants to George Foster, a competent and material witness, residing in the parish of East Carroll, the answers to which, when duly taken under oath, are to be used as evidence on the trial of the above cause in behalf of defendants.

Intg. 1st. Will you please state where you were residing during the years 1868, 1869, & 1870, & what business were you engaged in during those years?

Intg. 2nd. Please state if you ever knew John H. Green, of the parish of East Carroll, & Mrs. A. M. Scanlan, of same parish; if so, state when you became acquainted with them and whether Mrs. Scanlan was at that time a married woman or widow; if the
435 former, who was her husband?

Intg. 3rd. If, in answer to the above interrogatories, you have stated that you were engaged in business as a cotton factor & commission merchant during the years 1868, 1869, & '70, & that you had become acquainted with John H. Green & Mrs. A. M. Scanlan, please state whether you or your commercial house ever had any business relations with them or either of them. If yea, state the nature of those transactions, about what time they commenced, & how long they continued.

Intg. 4th. If, in answer to the preceeding interrogatory, you have stated that you made advances to Mrs. A. M. Scanlan for the purpose of enabling her to carry on the cultivation of her plantation, please state where the plantation was situated & how much, if any, ballance of account was due you or your firm by said Mrs. Scanlan on or about the 23rd of May, 1870.

Intg. 5th. Please state whether or not you or your firm required of said Mrs. Scanlan any security for such advances as you made to her either before or after making the same; &, if so, was any security furnished?

436 Intg. 6th. If, in answer to the preceeding interrogatory, you have stated that you obtained from Mrs. A. M. Scanlan the liquidation of the amount due your firm and a mortgage on her plantation to secure its payment on or about the 23rd day of May, 1870, please state whether you took any steps to ascertain whether said Mrs. Scanlan's title to the property mortgaged was valid and whether there were any prior incumbrances, etc. If so, state what steps you took and the result thereof.

Intg. 7th. Please state whether you, at the time of your acquisition of the property in question, had any knowledge or had ever re-

ceived notice of any kind of the existence of the claim herein asserted by pl'ff. If so, when & from what source?

Intg. 8th. If, in answer to the 3rd interrogatory, you have said that you or your firm had business relations with John H. Green, please state the extent, if any, to which you made advances to him and the security, if any, which you required from him.

Intg. 9th. If, in answer to the above, you state that you required the liquidation of his indebtedness to your firm into notes secured by mortgage, please state the amount of the several notes
437 & date of mortgage securing payment of the same.

Intg. 10th. State whether you or your firm at the time of or prior to the execution of said notes had any knowledge or had rec'd any notice of the existence of any prior incumbrances on the property mortgaged or had any notice or knowledge of the claim asserted by complainants.

Intg. 11th. State whether or not you took any steps to ascertain the condition of the title to the property mortgaged by J. H. Green; &, if —, what information and advice relative to the same did you receive.

Intg. 12th. State what disposition, if any, was made by you or your firm of the notes you obtained from J. H. Green above enquired about.

Intg. 13th. It is charged in plaintiffs' bill of complaint that certain tax sales of the property in dispute were fraudulently & collusively made for the purpose of ousting complainants' alleged mortgage upon the same. Please state how said sales happened to be made and the object and the purpose thereof, so far as you know.

438 Intg. 14th. It is charged in plaintiffs' bill of complaint that you sought and obtained the appointment of public administrator of Carroll parish for the purpose of obtaining control of a certain suit brought against you & others by Lanier, public adm'r, & that as soon as appointed you declined to prosecute said suit & fraudulently caused the same to be dismissed. Please state whether the above charge is true or false, how you happened to apply for the office, and at whose request you did so.

Intg. 15th. Did you ever see the notes sued on in this case; if so, when & where?

Intg. 16th. Were said notes filed or depos-ed with the suit of Lanier or yourself and other possessors of the property in question?

Intg. 17th. Did you make any efforts to find property of the estate of J. C. Pickett or to ascertain if said James C. Pickett died possessed of any property in Carroll parish? If yea, what efforts did you make, and what was the result of your investigations?

Intg. 18th. How long have you lived in Carroll parish?
439 Have you ever known or heard of the James C. Pickett referred to in complainants' bill as a citizen or resident of that parish?

Intg. 19th. State how you became the owner of that portion of the property in dispute *accured* from Mrs. A. M. Scanlan.

Intg. 20th. State how you became owner of that part formerly

belonging to John H. Green and which was adjudicated to Ezra Wheeler & Co. at marshal's sale. State the agreement and understanding between yourself and Ezra Wheeler & Co. with reference to this property & how they became interested in the same.

Intg. 21st. It is stated in plaintiffs' bill of complaint that a certain mortgage executed by you on the property — dispute in favor of Ezra Wheeler & Co., under date of 30th November, 1881, and a mortgage in favor of John W. Foster, your brother, on 29th Dec., 1881, and a judgment in favor of Alex. Foster, under date of 17th October, 1881, are & were mere shams, represented no real debt, and were concocted for the purpose of defrauding complainants. Please state the consideration of each one of these debts, and whether the parties named had any knowledge of the existence of
440 plaintiffs' pretentions or any — so far as you know of the effect thereof on the property in question.

Intg. 22nd. Did you at the time of the execution of said mortgage have in view the existence of plaintiffs' pretentions? Did you at that time consider the claim serious or fear that it would ever be pressed?

Intg. 23rd. When were you married to your present wife?

Intg. 24th. Had she any separate means at the time of your marriage, or did she acquire any subsequently; if so, how much & into whose hands did the same fall?

Intg. 25th. Who is in the actual possession of the Jonathan Morgan plantation at this time? If you reside upon it, state in what capacity & by what right you do so.

Intg. 26th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to this the subject of your examination or the matters in ques-
441 tion in this cause? If yea, set forth the same fully and at large in your answer.

C. J. & J. S. BOATNER, *Solicitors.*

A true copy.
Attest:
[SEAL.] B. BEATTIE, *D'y Cl'k.*

Cross-Int'g's to Mrs. M. J. Foster & Geo. Foster.

United States Circuit Court, 5th Circuit, Western District of La.

HEIRS J. C. PICKETT
vs.
GEO. FOSTER *et als.* } No. 110.

The plaintiffs reserve all legal objections to the testimony of Mrs. M. J. Foster & of George Foster, & especially object to their testimony for or against each other in this case, because they are husband & wife & are prohibited by law from testifying in favor of or against each other.

Cross-Interrogatories to Mrs. M. J. Foster.

X Intg. 1st. Where were you married to George Foster? When were you married to him?

X Intg. 2nd. If you say you had money when you married George Foster, state how much you had. Was it gold or silver or
442 currency? Where did you keep it? What did you do with it? If you say you acquired any money after your marriage to Mr. Foster, state when, where, & how you acquired it; state how much it was. What did you do with it? If you had any other means than money, state what it was & what you did with it.

X Intg. 3rd. Did you not lend whatever money or means you had to the firm of Ezra Wheeler & Co.; if not to that firm, to the firm of which your husband was a member?

X Intg. 4th. Did you not invest your money or means in the commercial firm of which your husband was a member? Was not that firm Ezra Wheeler & Co.?

X Intg. 5th. How much money did you receive from said firm after your money went into their hands or under their control? How much did you draw out of said firm?

Cross-Interrogatories to George Foster.

X Intg. 1st. When were you married and where?

X Intg. 2nd. What was the name or style of the firm in which you were a partner in the commission business in New Orleans?

443 X Intg. 3rd. If you say your firm did business with John H. Green and Mrs. A. M. Scanlan, annex copies of the accounts current between said firm and John H. Green & Mrs. A. M. Scanlan.

X Intg. 4th. Were you not public administrator of Carroll parish? When were you appointed? How long did you remain in office? Who was your predecessor in said office?

X Intg. 5th. What efforts did you make to ascertain if any property belonged to the estate of James C. Pickett was in the parish of East Carroll? Didn't you know that a suit on the mortgage notes in favor of James C. Pickett to foreclose a mortgage against property in your possession or that of your wife was pending in the district court of East Carroll? Did you ever communicate with James C. Pickett'- heirs or try to discover their residence to inform them of your appointment as public administrator, or to notify them that you would have yourself as public administrator called at the door of the court-house to prosecute the said suit, or to have same dismissed? If so, when & how?

X Intg. 6th. Did you ever take any steps to inform the heirs of James C. Pickett that you could not prosecute their suit as public administrator, as you were also defendant? If so, when and how?

444 X Intg. 7th. Where were you when the suit of Lanier, public adm'r, on yourself was dismissed? Were you not in the parish? Were you not in the town of Providence? Were you not at the court-house? Did you not know that your attorney intended to have the suit aforesaid dismissed by calling Lanier or yourself a public administrator (& succession to Lanier), to come forward and prosecute that suit?

X Intg. 8th. Where was Lanier at that time? Who was public administrator at that time?

X Intg. 9th. Didn't you know that Mrs. R. M. Scanlan & Mrs. J. T. Green had borrowed money from J. C. Pickett & given him an act of sale or mortgage to secure its payment before you acquired any rights to the property? Didn't you know such an act was recorded in the recorder's office in Carroll or East Carroll?

X Intg. 10th. Where were you married to your present wife?

X Intg. 11th. If she had any means, state when she acquired it and where & how. In what did it consist, money or personal effects or real estate? When did she receive it? Didn't she lend it to Ezra Wheeler & Co.? Didn't she invest it in the business of that firm?

445 LUDELING & STILLMAN, *Solicitors.*

A true copy.
Attest:
[SEAL.] J. B. BEATTIE, *D'y Cl'k.*

Commission.

Circuit Court of the United States of America, Fifth Circuit and Western District of Louisiana, Holding Sessions in the City of Monroe, Louisiana.

To Charles R. Egelly, Esq., U. S. commissioner, Lake Providence, East Carroll parish, La.:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you George Foster and Mrs. M. J. Foster, his wife, both of East Carroll parish, Louisiana, and them duly examine on the annexed interrogatories and cross-interrogatories on oath touching and concerning certain matters and things in a case now pending in the said court wherein The Heirs of J. C. Pickett are plaintiffs and George Foster *et als.* are defendants,
446 and the same examinations so taken and reduced to writing you certify under your hand and seal and send enclosed to this court on or before October 4th, 1886, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Monroe, La., this 22nd day of September, in the year of our Lord 1886, and of the Independence of the United States of America the 111th.

[SEAL.] J. B. BEATTIE, *D'y Clerk.*

[Endorsed:] No. 110. U. S. circuit court. Heirs J. C. Pickett *vs.* George Foster *et als.* Comm.

447 *Ans. of Mrs. Foster & Geo. Foster.*

UNITED STATES OF AMERICA,
Parish of East Carroll, Town of Providence,
Western District of Louisiana.

In the Matter of the HEIRS OF J. C. PICKETT *vs.* GEO. FOSTER *et al.*, No. 110 of the Docket of the United States Circuit Court of the Western District of Louisiana.

Be it remembered that on this the (28th) twenty-eighth day of Sept., A. D. 1886, I, Charles R. Egelly, a commissioner of the circuit court of the United States in and for the western district of La., duly commissioned and qualified as such, did, under and by virtue of the several acts of Congress authorizing and regulating the taking of depositions in civil causes pending in the circuit courts and district courts of the United States and by virtue of a special commission to me directed by the circuit court of the United States for the 5th circuit, dated at the city of Monroe, La., on the twenty-second of Sept., A. D. 1886, authorizing and requiring me to take the depositions of the witnesses George Foster and Mrs. M. J. Foster, his wife, both residing in the parish of East Carroll, in said district, as defendants therein in the above-entitled cause and as witnesses
448 thereof to the interrogatories and cross-interrogatories to them to be propounded, *to* which, when taken under oath, are to be read in evidence in behalf of the said defendants on trial of the case now pending in said circuit court, styled No. 110, "Heirs of J. C. Pickett *vs.* George Foster *et al.*"—

I, the said commissioner, did cause to come before me, at my office, in the town of Providence, La., in the western district thereof, at the hour of 12 o'clock m. on the said twenty-eighth day of September, A. D. 1886, the following persons, to wit, George Foster, witness in a case pending in the circuit court of the United States in and for the western district of La., wherein The Heirs of J. C. Picket are plaintiffs and George Foster *et al.* are defendants.

And the said GEORGE FOSTER, of lawful age, being by me duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth to the interrogatories to him to be propounded, I did proceed and did reduce to writing his answers thereto seriatim in words and figures as follows, to wit:

Interrogatory 1st. Witness answering and says: I resided in the city of Brooklyn, New York; was engaged in business
449 as cotton factor and commission merchant, under the firm name of Foster, Gwyn & Co. in the city of New York, and the firm name of Foster & Gwyn in the city of New Orleans, La.

Intg. 2nd. Witness answering and says: Yes; I knew them both. I became acquainted with them in 1868. Our New Orleans house was doing business with them. Mrs. Scanlan was a widow at that

time, known as Mrs. Ricketts. She married Mr. R. M. Scanlan in 1869, about the 15th July.

Intg. 3rd. Witness answering and says: Yes; our house advanced both of them large sums of money and supplies to cultivate and maintain their plantation during those years. The transactions commenced in 1868 and continued until and including 1870 and a part of 1871.

Intg. 4th. Witness answering and says. The plantations belonging to John H. Green and Mrs. A. M. Scanlan were situated in East Carroll parish, La. (at that time Carroll parish, La.), and known as the Morgan or Bell plantations.

The plantation was subdivided on the 23rd of May, 1870, by an act of partition between them. Mrs. Scanlan owed my firm (19,000.00) nineteen thousand dollars in 1870.

450 Intg. 5th. Witness answering and says: Yes; in liquidation of the amount she owed my firm of Foster & Gwyn we received her notes, secured by mortgage on her plantation for the amount.

Intg. 6th. Witness answering and says: When our house commenced doing business with Mrs. Scanlan F. M. Goodrich was employed as our attorney, and he assured us that her title was good. Afterwards we employed D. C. Jenkens, an attorney, to examine the title of Mrs. Scanlan's land, and I submit herewith and annex hereto his written opinion, filed herewith for reference, marked Exhibit "A."

I also got the recorder of mortgages to examine with *with* me and we found no mortgages or other encumbrances on record against the property.

Intg. 7th. Witness answering and says: At that time we had no knowledge nor had we received any notice of the existance of the claim of plaintiffs. The first notice we had of it was from the examination made by Jenkens, submitted herewith, said claim being erased upon the records of the recorder's office of the parish of Carroll.

Intg. 8th. Witness answering and says: On the 23rd of
451 May, 1870, we *l*ook, in liquidation of his account, his notes for ($10,000.00) ten thousand dollars, secured by mortgage on his plantation, and on the 7th July, 1871, we took his note for ($3,723.60) three thousand seven hundred and twenty-three & $\frac{60}{100}$ dollars, which was likewise secured by mortgage; also on M'ch 12th, 1872, we again took his note for ($3,009.55) three thousand and nine & $\frac{55}{100}$ dollars, which was also secured by mortgage on the same property.

Intg. 9th. Witness answering and says: I have answered as above in interrogatory 8th, to wit: On May 23d, 1870, ten thousand doldollars.

$10,000.00	$10,000 00
July 7th, 1871	3,723 60
March 12, 1872	3,009 55
Total	$16,733 15

Intg. 10th. Witness answering and says: No; we did not have any knowledge of the existance of any prior incumberences on the property nor had we any knowledge or notice of any kind of the plaintiffs' claim, except as above stated, of the deed of trust which was erased on the records. Goodrich, Green, & Mrs. Scanlan always assured us that their title was good and unincumbered. If our firm had known that complainants or anybody else had any pretentions we would not have made the large advances we did to Mr. Green and Mrs. Scanlan.

452 Intg. 11th. Witness answering and says: I examined the records with the assistance of the recorder of mortgages and found no prior leins or incumberences on Green's property, and felt satisfied that the title was good and valid.

Intg. 12th. Witness answering and says: Our firm in New York city had borrowed a large sum of money from Ezra Wheeler & Co., of that city, to secure the payment of which we transfer-ed to them the notes and mortgages of Jno. H. Green.

Intg. 13th. Witness answering and says: At the time the tax sale of the property was made to W. A. Gwyn I owed Gwyn & Dyer, of which firm he was a partner, a large sum of money. To better satisfy them I agreed with them that W. A. Gwyn should buy the property and hold it until I could pay them, and when I had done so he should transfer the property to me. There was no fraud or collusion contemplated in this transaction against the complainants, as I had been advised by emenent counsel and believed there was no validity in their claim. They had let their notes, the basis of the claim, be prescribed by the laps- of five years. They had taken no action to annul the sale in the suit of Goodrich, tutor, long

453 since debarred. They had let the suit of Lanier, public administrator, be dismissed without an effort to prosecute it. The tax sale was made without any reference to *to* them or with any intent of fraud or col-usion.

Intg. 14th. Witness answering and says: The charge in plaintiffs' bill of complaint is false. I applied for the office of public administrator at the request of citizens of the parish and at the earnest solicitation of Montgomery & Delony, who said they had some large claims against vacant successions to collect, and they agreed if I would take the office they would attend to all the duties and cares of same, and that I need not attend to more than I wished. They told me that the office would pay for the trouble. I would not have taken it under any other conditions.

Intg. 15th. Witness answering and says: I never have nor do I know that there are any.

Intg. 16th. Witness answers and says: No; Lanier assured me he never had the notes and did not know where they were.

454 Intg. 17th. Witness answering and says: Yes; after I became public administrator I ascertained that the estate of Jas. C. Pickett was not a vacant succession. Pickett died in the State of Kentucky, and his estate was administered on at Lexington, in that State. I found that no inventory had been made of any property belonging to him in the parish of Carroll, nor any

apprais-ment made or anything done to prosecute the claim which forms the base of this suit.

Intg. 18th. Witness answering and says: Fourteen (14) years. I have never heard that James C. Pickett was a resident of this parish or that he ever visited the parish.

Intg. 19th. Witness answering and says: After endeavering to collect the claim against Mrs. Scanlan without success and to avoid a lawsuit I entered into an agreement of compromise with her, which was approved by F. M. Goodrich and authorized by her husband, R. M. Scanlan; also by W. A. Gwyn for the firm of Foster & Gwyn. I paid her $36,904.94, for which she gave me a warranty deed to her property, as will appear by the act of sale made Feb'y 5th, 1873, by Mrs. A. M. Scanlan and her husband, as will
455 more fully appear by reference to act filed as an exhibit by complainants. I also attach herewith the original agreement and compromise above refer-ed to, marked Exhibit "B," for reference.

Intg. 20th. Witness answering and says: After Ezra Wheeler & Co. got possession of the place by the United States marshal, I agreed with them that I would pay them the debt with interest due them by Foster, Gwyn & Co. as soon as possible, and that I should have the revenues of the place in the meantime, and that they should retain the ownership of the property until I had done so, and that I would act as their agent and maintain the property for them in the meantime. I file herewith a power of attorney making me their agent and marked Exhibit "C" for reference. After having reduced the debt to about $7,200.00, I bought their part of the plantation, paying them about $2,200.00 in cash, and gave them acceptance for $5,000.00, payable in one and two years, secured by mortgage on the same, as shown by a certified copy of the deed and mortgage as filed by the complainants.

456 Intg. 21st. Witness answering and says: The mortgage to Ezra Wheeler & Co. was given, as stated above, for balance of purchase-money on the property, say $5,000.00. The mortgage to Jno. W. Foster, my brother, was for money borrowed of him. I attach hereto his letter, with a statement of the transaction, note canceled, receipt certified to, power of attorney, and stamped envelope, all marked Exhibit "D," for reference, and made part of this answer. The judgment in favor of A. H. Foster was for a claim against the firm of Foster, Gwyn & Co., of which I was a member, due the Fourth National Bank of New York, for something over $6,000.00, in which they had instituted suit against me. A. H. Foster compromised the claim, and the bank transfer-ed and subrogated the claim to him, and he took judgment against me for the amount he paid them, as will appear by the papers filed by the complainants. All the parties above named had no knowledge of the pretentions of the plaintiffs or any fears of any claims against the property, for I had always assured them that my title was undisputed and unincumbered. All of these transactions were *bona fide* and were not concocted for the purpose of defrauding complainants, as charged.

457 Intg. 22nd. Witness answering and says: No; I did not consider there was any validity to plaintiffs' claims or that they would ever try to enforce them.

Intg. 23d. Witness answering and says: On the 7th Oct., 1874, in the city of Brooklyn, New York.

Intg. 24th. Witness answers and says: Yes; she had. She received on the first of July, 1872, a legacy from her sister Mrs. Bella G. Putnam's estate—the sum of $2,986.76, which amount was deposited with the firm of Foster, Gwyn & Co., and for which sum the firm executed their notes to her. On the dissolution of the firm I assured the payment of the debt and the debt remains unpaid.

Intg. 25th. Witness answering and says: Mrs. Mary J. Foster, my wife, is the actual owner of this plantation at this time. She has leased the place to J. P. Alexander, but reserved the homestead and twenty acres of land upon which we now reside.

Intg. 26th. Witness answers and says: As to the charges of fraud, collusion, bad faith, and so forth, charged in complainants'
458 bill, I declare that they are unfounded and unjust. I never was appointed by the court to be administrator of the estate of James C. Pickett. I never knew of such an estate. I was never asked to prosecute the suit in the name of Lanier or any one else. I was never asked as public adm'r or in any other capacity to prosecute or institute any proceedings for the complainants or any one else for their benefit, nor did they or any one ever ask any information from me in regard to their suit in any way. I did not know them or where they resided. I never had any control of their claim, and Lanier declared to me he never had them in his possession. No effort was ever made to prosecute this claim. I never considered that I had ever assumed any responsibility for the complainant.

Cross-examined:

X Intg. 1. Witness answering and says: On the 7th Oct., 1874, in the city of Brooklyn, New York.

X Intg. 2. Witness answering and says: Foster & Gwyn.

X Intg. 3. Witness answering and says: The books of the
459 firm of Foster & Gwyn were stored in New Orleans on the dissolution of the firm, and I do not know that they can be procured for the purpose of furnishing the ac's current requested at this time. Accounts currents were furnished to Jno. H. Green and Mrs. A. M. Scanlan, which were liquidated by notes secured by mortgage, as before stated in the examination-in-chief.

X Intg. 4th. Witness answers and says: Yes; was appointed on the 29th April, 1873, and remained in office until it was abolished, in 1877. Benj. H. Lanier was my predecessor.

X Intg. 5th. Witness answering and says: Benj. H. Lanier, who had charge of this estate, had never filed any inventory or made any apprais-ment, and I could not ascertain that there was any property in the parish belonging to this estate. I knew that a suit was pending or erased mortgage notes which had been prescribed. Said notes were secured by a deed of trust which I was advised was

illegal in this State, and that said deed of trust was erased on the records of Carroll parish. I never knew the heirs of Pickett
460 or where they resided. I never was appointed adm'r of this estate or asked to be. I could not notify them that the case would be called out for the reason above stated.

X Intg. 6th. Witness answers and says: I did not know any of the heirs of Jas. C. Pickett or where they resided, and having never had anything to do with this estate had nothing to communicate to them.

X Intg. 7th. Witness answers and says: I was in Cincinnati, Ohio. I was not in the parish of Carroll. I was not in the town of Providence. I was not at the court-house. I did not know that the attorneys at that court intended to call out the suit and have it dismissed.

X Intg. 8th. Witness answers and says: I do not know. I was public administrator at that time, but had never been appointed as adm'r of the Picket succession. I never succeeded Lanier in any succession that he had been the administrator of.

X Intg. 9th. Witness answers and says: I did not. Long
461 after the large advances had been made by my firm to J. H. Green & Mrs. A. M. Scanlan my attention was called to the fact that there had been a deed of trust recorded against their property, but same had been erased, as will fully appear by a certified copy of the deed of trust and erasure thereon filed with the answer of defendant Geo. Foster in this suit.

X Intg. 10th. Witness answers and says: Brooklyn, N. Y.

X Intg. 11th. Witness answers and says: She received a bequest from her sister, who died in St. Paul, Minnesota. It consisted of money. She received it on the 1st July, 1872. She did not lend it to Ezra Wheeler & Co. nor did she ever invest it in their firm.

Sworn to and subscribed before me at the closing of this testamony, at the hour of five o'clock p. m. on this the 28th day of Sept., A. D. 1886, which testimony was sworn to, signed, and subscribed by the witness, George Foster, in my presence, without turning aside to other acts, on the day and date herein mentioned, at my office, in the town of Providence, western district of La.

[SEAL.] CHAS. R. EGELLY,
United States Commissioner.

462 And at the hour of five o'clock p. m. of the same day I caused to appear before me Mrs. M. J. FOSTER, a witness for the defendants in the within-entitled cause, styled The Heirs of J. C. Pickett *versus* George Foster *et al.*, and after being by me duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth to the interrogatories and cross-interrogatories to be to her propounded, which her said answers are to be read in evidence in behalf of said defendants on the trial of the said cause so pending in the circuit court of the United States in and for the western district of La., I did reduce to writing the answers of said witness ser-atim in the words and figures as follows, to wit:

Intg. 1st. Witness answering and says: I am one of the defendants herein. I am the wife of George Foster.

Intg. 2nd. Witness answers and says: I was married to George Foster on the 7th Oct., 1874.

Intg. 3rd. Witness answers and says: Yes; I collected $2,986.26 from my sister's estate, which I deposited with Foster, Gwyn & Co., New York, and received their note for the same.

463 Intg. 4th. Witness answers and says: My husband became embarrassed in 1881; I proceeded to enforce the collection of the debt, which his firm of Foster, Gwyn & Co. owed me, and which debt my husband had assumed before my mar-iage to him. The proceedings in said suit are on file in the complainants' exhibit marked "A," to which reference is made; I was no party to any of the actions or proceedings of any of the persons charged in the complainants' bill and had no knowledge of them; I acquired my title to the property in a legal manner and believe it to be valid, and had no knowledge of complainants' pretentions. I knew nothing of the affairs or business transactions of my husband or others by which he acquired the property of which I afterwards became the purchaser under my judgment against my husband.

Cross-examination:

X Intg. 1st. Witness answers and says: In Brooklyn, New York, on the 7th October, 1874.

X Intg. 2nd. Witness answers and says: Yes; I received a bequest from my sister's estate, amounting to $2,986.76 in United States currency. I deposited it with Foster, Gwyn & Co., and

464 received their note for it, all of which occur-ed prior to my mar-iage to Geo. Foster; I acquired no money after my mar-iage.

X Intg. 3rd. Witness answers and says: No; I did not loan any money to Ezra Wheeler & Co.; I loaned it to the firm of Foster, Gwyn & Co. two years prior to my mar-iage to Geo. Foster, my present husband.

X Intg. 4th. Witness answers and says: No; I did not; my husband was never a member of the firm of Ezra Wheeler & Co.

X Intg. 5th. Witness answers and says: I never did draw any money out of my deposit with Foster, Gwyn & Co.

M. J. FOSTER.

Sworn to and subscribed before me on the closing of this testamony, at the hour of six o'clock p. m. on this the 28th day of Sept., A. D. 1886, which testimony was sworn to, signed, and subscribed by the witness, Mrs. Mary J. Foster, in my presence without turning aside to other acts on the day and date herein mentioned, at my office, in the town of Providence, western district of Louisiana.

CHAS. R. EGELLY,

[SEAL.] *United States Commissioner.*

465 UNITED STATES OF AMERICA,
State of Louisiana, Parish of East Carroll,
Western District of Louisiana.

I, Charles R. Egelly, a commissioner of the circuit court of the United States in and for said district, duly appointed and qualified and acting as such and under and by virtue of the several acts of Congress and by special authority of the 5th circuit court of the United States, do hereby certify that the witnesses whos- depositions are above and herein set forth were of sound mind and lawful age and were by me sworn and examined and their answers to the interrogatories and cross-interrogatories to them propounded reduced to writing and subscribed by them in my presence, and at the end of each page thereof, on the day and date and between the hours named and at the place and in their behalf; and I do further certify that I am not of counsel nor attorney for either of the plaintiffs or defendants to the suit in contrariety or in any way interested in the event of said suit. All interlineations were made by me, commissioner, before first obtaining the signatures of witnesses or subscribed by them to the depositions on the several pages hereof.

In testimony whereof I have hereto set my hand and
466 affixed my *my* official seal without turning aside to other acts, at my office, in the town of Providence, in the parish of East Carroll, in the western district of Louisiana, on this the 28th day of September, A. D. 1886.

[SEAL.] CHAS. R. EGELLY,
United States Commissioner, Western District of La.

467 *Abstract of Lands Mortgaged by Agnes M. Scanlan to Foster and Gwyn.*

The lands have been in possession of Jonathan Morgan since 1832 & 1834, having been entered jointly by O. J. & Jonathan Morgan; O. J. Morgan transferred his interest to Jonathan Morgan Dec. 5th, 1834.

The interest of Mrs. Scanlan was sold at sheriff's sale Sept. 5th, 1868, F. M. Goodrich being the purchaser, & he sold to Mrs. Scanlan Nov. 29th, 1869, retaining mortgage thereon; said mortgage is cancelled, as is also a mortgage resulting from a deed of trust executed in favor of J. Ricketts to secure a debt of $8,000, favor of J. C. Pickett.

No other mortgage exists of record as I can find against the property but the said mortgage favor of Foster & Gwyn. I think a title resulting from a foreclosure of the mortgage would be valid.

Providence, Dec. 9th, 1872.

D. C. JENKINS, *Att'y.*

Exhibit "A." Filed Sep. 28th, 1886. Chas. R. Egelly, U. S. commissioner.

468 EXHIBIT "B," Filed Sept. 28, '86. —— ——, U. S. Commissioner.

Articles of agreement made and entered into this 10th day of Dec., 1872, between Geo. Foster, of the firm of Foster & Gwyn, of New Orleans, La., and Mrs. Agnes M. Scanlan, assisted by her husband, R. M. Scanlan, of Carroll parish, La. witnesseth:

That whereas Foster & Gwyn hold sundry evidences — debts, viz., a note and mortgage for $19,000, dated May 23rd, 1870; also a promissory note for $185.80 against Mrs. A. M. Scanlan, and a note and mortgage for $7,000, dated May 23, '70; a note and mortgage for $4,993.53, dated 11 March, 1872; also an individual mortgage in favor of F. Burnd, subrogated to Foster & Gwyn on 7th August, 1871, for about $1,690.00: Now, it is agreed that when Foster & Gwyn will return the above notes & mortgages satisfied that Mrs. A. M. Scanlan will give a good and perfect title to the following lands, viz: Her interest in the Morgan plantations as subdivided between her and J. H. Green, to wit, part of lot- 43, 44, part of lot 48, lot 1½, lot 2, containing $472\frac{41}{100}$ acres; part of lot 7, containing $157\frac{15}{100}$ acres, together with the ballance in front of said land; also in part
469 section 51 & 56, in T. 19 N., R. 13 E., containing $135\frac{28}{100}$ acres, and more particularly described on plat made by Rob't Boyd, surveyor, in 1870, together — eighteen mules, two horses, two wagons, 1 cotton gin, together with all the plows, sweeps, gear, and all other agricultural implements & machinery belonging to the said plantation.

It is further agreed that Foster & Gwyn are to take quiet possession of the rents as agreed per contract between them made on 7th June, 1872, and out of the proceeds when realized on that they will pay Johnson & Goodrich the sum of five hundred dollars. It is further agreed that on the payment of seven hundred and fifty dollars that Foster & Gwyn are to make Mrs. A. M. Scanlan a deed for that part of section- 51 & 56 containing $135\frac{28}{100}$ acres, as before referred to.

The above agreement is subject to the approval of W. A. Gwyn on the part of Foster & Gwyn, and Ferd. M. Goodrich on the part of A. M. Scanlan.

N. B.—The erasures and interlinïations were made before signing.

M. B. CLARKE. GEO. FOSTER.
H. O. CLARKE. A. M. SCANLAN.

By and with my consent.

R. M. SCANLAN.

I think it desirable that Mrs. Scanlan carries out the *written* agreement.

FERD. M. GOODRICH.

Signed in duplicate.

I approve the within, and that act of sale be made to George Foster.

WM. A. GWYN.

This done and passed in said parish of Carroll in the pres-
470 ence of the above witnesses, who signed hereto with said parties before me, notary, on the day, month, and year above written.

T. B. RHODES,
Notary Public. [SEAL.]

Agreement to Compromise.

EXHIBIT "C," Filed in Evidence Sept. 28, '86. Chas. R. Egelly, U. S. Commissioner.

We, Ezra Wheeler & Co., of the city, county, & State of New York, do hereby appoint George Foster, of Carroll parish, in the State of Louisiana, our true and lawful attorney, with power of substitution, for us and in our name, to manage and carry on the Bell plantation, situated in said parish of Carroll, La., and to that end to get full possession of all the property and rights belonging to said plantation and protect and maintain the same; to collect the rents and revenues, and, if necessary, to institute any legal proceedings requisite; to employ counsel; to appear in court; to give bond and do everything necessary to manage and maintain said plantation and property the same as we could or would do if personal-y-
471 present, hereby authorizing whatevever our said attorney shall lawfully do in the premises.

EZRA WHEELER & CO., [s.]
Represented by EZRA WHEELER.

New York, October 6th, 1873.

Signed, sealed, & delivered in presence of—
FRED. R. ANDERSON.
N. W. RIKER.

STATE OF NEW YORK, }
City & County of New York. }

Be it remembered that on this 6th day of October, in the year one thousand eight hundred and seventy-three, before me, the undersigned, Fred. R. Anderson, a commissioner resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Louisiana to take the acknowledgment of deeds, &c., to be used or recorded therein, personally appeared Ezra Wheeler, of the firm of Ezra Wheeler & Co., to me known to be the individual described in and who executed the within power of attorney, and acknowledged to me that he did sign, seal, and deliver the same as the free act and deed of the said firm on the day and year therein mentioned and for the consideration, uses, and purposes therein expressed.

472 In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[s.] FRED. R. ANDERSON,
Commissioner of the State of Louisiana in City, County, & State of New York.

STATE OF LOUISIANA, }
City of New Orleans. }

I, Andrew Hero, Jr., a duly commissioned and qualified notary public in & for the parish of Orleans, State of Louisiana, do hereby certify that the above and foregoing is a true copy of the original act and certificate of acknowledgment extant in my notarial archives and of which original I am the depository and legal custodian by virtue of the same having been annexed to and made part of an act passed before me on the seventeenth day of October, A. D. eighteen hundred and seventy-three, and being now extant on my notarial archives.

[SEAL.] As witness my hand & seal, at New Orleans, 30 April, A. D. 1874.

ANDREW HERO, JR.,
Notary Public.

E. Wheeler & Co., power of attorney to George Foster.
New York, Oct. 6, 1873.

473 EXHIBIT "D," Filed in Evidence Sept. 28, '86. Chas. R. Egelly, U. S. Commissioner.

Received, Jan'y 10th, 1882, of Geo. Foster, executor of the estate of Elizabeth Foster, deceased, two hundred dollars ($200.00) as an installment on account of my distribution share of said estate.

(S'g'd) JNO. W. FOSTER.

I hereby certify that this is a true and correct copy of the original receipt exhibited to me by the defendant Geo. Foster, which I have marked Exhibit "D" and annexed to his answers.

[SEAL.] Given — my hand and seal this the 28th day of Sept., A. D. 1886.

CHAS. R. EGELLY,
United States Commissioner.

($195.36.) PECAN GROVE, LA., *Dec'r 3rd*, 1877.

One day after date I promise to pay to the order of John W. Foster one hundred & nin-ty-five $\frac{36}{100}$ dollars, with interest from date, value received.

No. —. Due ——.

GEO. FOSTER.

[Written across the face:] Paid Ja'y 10, '82. John W. Foster.

Exhibit "D," filed in evidence Sept. 28, '86. Chas. R. Egelly, U. S. commissioner.

474 *Money Statement.*

Interest (13 mo.) deducted	$480 00
Installment, Mrs. E. Foster's est.	200 00
Note, with 43 n. int.	242 25
195	
Furniture, 41.75—100	136 75
	$1,059 00
Remitted A. H. F.	4,941 00
Amount of mortgage note	$6,000 00

Exhibit "D," filed in evidence Sept. 28, '86. Chas. R. Egelly, U. S. commissioner.

EXHIBIT "D," Filed in Evidence Sept. 28, '86. Chas. R. Egelly, U. S. Commissioner.

Know all men by these presents that I, John W. Foster, of the city of Washington, District of Columbia, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Field F. Montgomery, of the parish of East Carroll, State of Louisiana, my true and lawful attorney, for me and in my name, place, and stead, to join with George Foster, of the said parish of East Carroll, in the signing, execution, and acceptance of a mortgage from the said George Foster as mortgagor, in order to secure the payment of a promissory note of six thousand dollars ($6,000) for money loaned by me, John W. Foster, unto the said George Foster, the said mortgage to embrace all the real estate of which
475 he, the said George Foster, is in possession in the said parish of East Carroll, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully, to all intents and purposes, as I might or could do if personal-y present, hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by *writer* hereof.

In witness whereof I have hereunto set my hand and seal this 22nd day of December, A. D. 1881.

JOHN W. FOSTER.

Sealed & delivered in presence of—
THEODORE R. McFERSON.
E. J. McFERSON.

CITY OF WASHINGTON, } ss:
District of Columbia, }

Personally appeared before me, James E. Fitch, a notary public in and for said city and District, on this the 22nd day of December, A. D. 1881, John W. Foster and subscribed and acknowledged the

foregoing instrument as his voluntary act and deed, and Theodore R. McFerson and E. J. McFerson also appointed before me and subscribed their names thereto as witnesses; and I further cer-
476 tify that the said persons are known to me to be the individuals described therein.

[SEAL.] As witness my hand and official seal the date above written.

JAMES E. FITCH,
Notary Public, D. C.

Return to John W. Foster, 1405 I St., Washington, D. C., if not claimed in 5 days.

Letter about loan & mortgage and power of attorney to F. F. Montgomery.

EXHIBIT "D," Filed in Evidence Sept. 28, '86. Chas. R. Egelly.

(Washington, D. C., Jan. 10, 1882, 4 p. m.)

(Stamps.)

GEORGE FOSTER, Esqr.,

Villa Vista P. O.,

East Carroll Parish, Louisiana.

EXHIBIT "D," Filed in Evidence Sept. 28, '86. Chas. R. Egelly, U. S. Commissioner.

Office of John W. Foster, 1405 I street N. W.

WASHINGTON, D. C., *Jan'y* 10, 1882.

DEAR GEORGE: Your letter of the 30th ult. was received on Saturday, enclosing your note in my favor for $6,000, payable one year after date, and copy of mortgage on your plantation to secure the same, and on yesterday your letter of the 2nd was received.

I at once proceeded to carry out your instructions. I have taken it for granted that you have been careful to observe the re-
477 quirements of your Louisiana laws, of w-ich I know nothing, but as to the note and mortgage and upon your representation I except them as in all things correct. I hand you herewith a power of attorney authorizing Mr. Field F. Montgomery to act for me in the matter. I also enclose a receipt for $200 from you as executor of aunt's estate, also your note for 195.36 and statement of money, showing a deduction from the note of $1059, and I have to advise that I have to-day sent Alex. at Evansville a draft on N. Y. for $4941, all of which I hope you will find correct, if not, I will upon advisement correct my errors.

We are all well except Edith who is not entirely well. Eleana came home during the holidays, and as there is a good school here we decided to keep her at home. We are expecting a visit from mother this week, and have the promice of one from Eliza next week also. I had quite a newsy letter from Uncle Tim at Topeka last week. His two daughters are married to men of good habits & industrious; they board at home with him, he has gotten retired to the pention rolls and financially is pretty comfortable. I infer from his letter he does not see much of Fielding's side of the house. John Johnson has entirely reformed, but is very weak-minded, soft-ning of the brain, &c., is in a lawsuit with
478 Nannie & Veule about a settlement of their father's estate. Tom desires to be remembered to you & James.

Parke joins me in love to Mary.

Affectionately, JOHN W. FOSTER.

As soon as I can learn anything about the P. O. matter I will write James.

[Endorsed:] No. 110. U. S. circuit court. Heirs of J. C. Pickett *vs.* George Foster *et al.* Interrogatories and cross-interrogatories in behalf of d'f'ts, taken before Chas. R. Egelly, U. S. commissioner, Sept. 28, '86. Opened and filed March 19th, 1887. J. B. Beattie, d'y cl'k. Filed in evidence on behalf of defendants July 20th, 1887. J. B. Beattie, d'y cl'k.

479 *Interrogatories Propounded to E. J. Delony.*

United States Circuit Court, 5th Circuit & Western District of Louisiana.

HEIRS J. C. PICKETT *vs.* GEORGE FOSTER *et al.* } No. 110. In Equity.

Interrogatories propounded to E. J. Delony, a witness on behalf of defendant-, residing in East Carroll parish, Louisiana.

Intg. 1st. Where do you reside and what is your present vocation?

Intg. 2nd. In what business were you engaged prior to acquiring your position?

Intg. 3rd. Are you acquainted with George Foster, one of the defendants herein?

Intg. 4th. Do you know anything of the circumstances under which said George Foster was appointed public administrator of Carroll parish? If yea, state them, & if you know state at whose request & for what purpose he accepted the office.

Intg. 5th. Do you know anything of the claim sued on in the case?

Intg. 6th. Were the notes sued on herein ever filed in the suit brought thereon by Lanier, the public administrator, Mr. Foster's immediate predecessor in office?

480 Intg. 7th. Please state what att'y, if any, represented Mr. Foster as public adm'r general-y.

Intg. 8th. If in answer to the preceeding interrogatory you say you did, please state if you ever called on Lanier, as public adm'r, for the notes in suit or made any inquiries of him in relation to the same.

Intg. 9th. If yea, state his replies if you can recollect them.

Intg. 10th. Did you know of any estate, real or personal, of J. C. Pickett situated in Carroll parish during the term of George Foster as public administrator of said parish?

Intg. 11th. Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set the same forth fully and at large in your answers.

Cross-interrogatories:

X Intg. 1st. If in answer to interrogatory 4th you state anything of the cause and circumstances which led to the appointment of George Foster as public administrator, please state in detail from whom, when, and how you acquired knowledge of the
481 facts given by you. Do you know of your own knowledge all the facts you have given in your answer to Intg. 4th?

X Intg. 2nd. What were your personal and political relations with Gove-nor W. P. Kellogg when he appointed George Foster public adm'r? Were you on such intimate terms of friendship with Gove-nor Kellogg as to enable you to know the cause and circumstances which operated on his mind inducing — to make said appointment? Were you present when the appointment was made? Did you use your personal influence with the gove-nor to procure said appointment? If not, how do you know the causes and circumstances which influenced the gove-nor to appoint George Foster?

X Intg. 3rd. If, in answer to the 11th general interrogatory, you state any facts or circumstance material to the issue involved in this case, will you state how you acquired knowledge of those facts? Do you know them of your own knowledge? Did you acquire knowledge of them from George Foster or any one else?

X Intg. 4th. Have you ever been written to by George Foster or any one else requesting you to give testimony in this case? If so, annex the letter or letters received by you.

482 X Intg. 5th. Have you ever been approached by George Foster or any one else and importuned or requested to give your evidence in this case? Have you ever discussed with George Foster or any one else the nature of this suit or the kind of evidence you might be able to give? Have you ever imparted to George Foster or any one else the substance of the evidence you have given in your examination-in-chief? If so, when, at whose request, and to whom did you give the information?

X Intg. 6th. Was not the law firm of Montgomery & Delony (of which you were a member before going on the bench) the regular

attorneys of George Foster in all suits in which he was interested in the parish?

X Intg. 7th. Do you know of your own knowledge all you have said in answer to the 6th, 8th, and 10th interrogatories-in-chief? Are your answers free from all opinions, conjectures, and heresay testimony, and are your statements absolutely within your personal knowledge?

X Intg. 8th. What has become of B. H. Lanier, the predecessor of George Foster as public administrator? Where is he now? Where did he remove from this parish? Is he living? If so,
483 where does he live? Do you know any reason that his whereabouts should be concealed? Has he fled from the United States on account of any crime or charge made against him by the Government? If so, when? Is it not generally understood that some years ago he fled the country to escape a criminal prosecution by the Government?

W. G. WYLY, *Solicitor.*

A true copy.
Attest:
[SEAL.] J. B. BEATTIE, *D'y Cl'k.*

484 *Commission.*

Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for the Western District of Louisiana.

To Charles R. Egelly, Esq., Lake Providence, Louisiana:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you Hon. E. J. Delony, of East Carroll parish, Louisiana, and him duly examine on the annexed interrogatories on oath touching and concerning certain matters and things in a case now depending in the said court, wherein Heirs of J. C. Pickett are plaintiffs and George Foster *et als.* are defendants, and the same examinations, so taken and reduced to writing, you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Monroe,
[SEAL.] La., this 4th day of May, anno Domini 1887, and the 111th year of the Independence of the United States of America.

J. B. BEATTIE, *D'y Clerk.*

[Endorsed:] United States circuit court. No. 110. Heirs J. C. Pickett *vs.* George Foster *et als.* Commission.

485 *Answers of Delony.*

UNITED STATES OF AMERICA,
Parish of East Carroll, Western District of Louisiana.

United States Court.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et als.* } No. 110.

Be it remembered that on this 20th day of May, A. D. 1887, I, Chas. R. Egelly, a commissioner of the circuit court of the United States in and for the western district of Louisiana, duly commissioned, appointed, and qualified as such, did, under and by virtue of the several acts of Congress authorizing and regulating the taking of depositions in civil causes pending in the circuit & district court in and for the western district of Louisiana and by virtue of a commission to me issued by the clerk of the United States circuit court in and for the western district of Louisiana to me directed and dated at the city of Monroe, La., on the 4th day of May, A. D. 1887, authorizing and requireing me to take the deposition of Edward J. Delony, a witness for the defendant-, which testamony, when so taken, is to be used and read in evidence on trial of the case now pending in the circuit court of the United States for the west-
486 ern district of Louisiana, numbered 110, styled Heirs of J. C. Pickett *vs.* George Foster *et als.*—

I, the said commissioner, did, on the 20th day of May, A. D. 1887, cause to appear before me in the town of Lake Providence, La., in the western district thereof, between the hours of one and three o'clock of said day, the witness, EDWARD J. DELONY, to be examined as a witness in the said cause so pending in said circuit court of the United States in and for the western district of Louisiana, wherein The Heirs of J. C. Pickett are plaintiffs and George Foster *et als.* defendants, and, the said witness being of lawful age and being by me cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in answer to the interrogatories and X interrogatories to him to be propounded, I proceeded to reduce to writing his said answers hereto seriatim in words and figures as follows, to wit:

To interrogatory first witness answers and says: I reside in the town of Lake Providence, — of East Carroll, La., and am judge of 8th judicial dist. of said State.

487 To interrogatory 2nd witness answers and says: Attorney-at-law.

To interrogatory 3rd witness answers and says: I am.

To interrogatory 4th witness answers and says: When B. H. Lanier, the predecessor of George Foster, resigned the position of public administrator of the parish of East Carroll I held two or three claims against vacant successions in said parish, and I was anxious to see the position filled as soon as possible, as some of the claims would soon prescribe, and I wanted to se- an intelligent and

honest man in the office, and, believing that a Democrat could not obtain the appointment, I sought Mr. George Foster, who, though a Republican, I thought an upright and capable man, and requested him to apply for the position.

He at first refused to do so, saying he did not want any office and did not know that he could get it if he did, but he did not want to have anything to do with politics, but I insisted upon his applying for the office and urged upon him that in the political condition of the country it was the duty of the good men in his party who
488 were *bona fide* citizens of the country and interested in its welfare to come forward and take office whenever they could do so. After much persuasion I induced him to *to* apply for the office on condition that I would take charge of the business appertaining thereto and relieve him as much as possible from the work, so that it would not interfere with his planting operations in which he was then engaged. Under this agreement on my part he applied for the office and received the appointment.

To interrogatory 5th witness answers and says: I know nothing further than that a suit was instituted by B. H. Lanier, as public administrator, purporting to be based upon the notes upon which I suppose this suit is brought, and my impression is, without reference to the record for positive information, the law firm of Montgomery & Delony, of which I was a member, made an appearance for defendants by way of an exception of no cause of action, and when the case was called for trial, neither the plaintiff or his counsel having appeared to prosecute the suit, they were called at the court-house door in accordance with law, and, neither appearing, on motion the suit was dismissed.

489 To interrogatory 6th witness answers and says: The notes, I am quite certain, were never filed in the suit, and Lanier stated to me that he had never had them.

To interrogatory 7th witness answer*ing* and says: The law firm of Montgomery and Delony were the attorneys for George Foster, adm'r, though I attended almost entirely to the business.

To interrogatory 8th witness answers and says: I enquired of Lanier about the notes alleged upon in the suit instituted by him as public administrator, referred to heretofore, and he informed me, as I have before stated, that he did not have nor had he ever seen them, and he did not believe they had ever been in the parish. I think he stated also, though I will not be positive, that the att'y, Judge J. W. Montgomery, had stated to him they had never been sent to him.

To interrogatory 9th witness answers and says: I have answered this — interrogatory 8th.

To interrogatory 10th witness answers and says: I never knew of any such estate and never could find any property, real or personal, rights, or credits upon which to base an application for administration and never could find that Lanier, as public administra-
490 tor, had ever offered any such succession during his term of office as public administrator.

To interrogatory 11th witness answers and says: I believe I have

stated about all I can now remember concerning the matter inquired of. I can say most positively that George Foster applied for the office of public administrator of this parish at my most earnest solicitation, and I am fully satisfied that if I had not promised him to relieve him of the care and trouble which might grow out of the business of the office he never would have applied for it.

E. J. DELONY.

Cross-examined:

To X Int. 1st witness answers and says: I have stated — my answer to interrogatory 4th in chief only such facts as were within my own personal knowledge, except wherein I have stated an opinion or belief. All conversations with Mr. Foster in reference to his application for appointment as public administrator was had in the parish of East Carroll and a short time before his appointment to the office.

To X interrogatory 2nd witness answers and says: I had no personal acquaintance with Gov. Kellogg at that time and do not think I had ever seen him. We were opposed to each other politically. He was, I understood, a carpet-bag Republican, and, as I believed, an enemy to the best interests of the State of Louisiana. I was not and have never been, even in the slightest degree, on terms of friendship with him, intimate or otherwise, and never knew or enquired into the causes or circumstances which operated in his mind in making the appointment referred to or any other. I was not present when the appointment was made and never used any personal influence in procuring said appointment. I may have written a letter stating that Mr. Foster was an honorable man and fitted for the position, though I don't think I ever did that. I suppose that, the office being one of very little profit and considerable responsibility, it was not especially sought after by Gov. Kellogg's political friends and associates. He could give it to an honest man without affecting his status to any great extent with his party, and he gave the appointment to Mr. Foster without very much influence being brought to bear upon him to induce him to do so.

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To X interrogatory 3rd witness answers & says: I have spoken entirely from my own personal knowledge of the facts related by me in my answer to the 11th interrogatory-in-chief and in answer to all other interrogatories except when stated otherwise. I have also given the names of the parties from whom I have acquired my knowledge of facts received from others and how I received them.

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To X interrogatory 4th witness answers and says: I have never been written to by Mr. Foster or any one else requesting me to give testimony in this case and have, therefore, no letters of that kind to annex.

To X interrogatory 5th witness answers and says: I have never been approached by Mr. Foster or any one else to give my evidence in this case, though I have talked freely to Mr. Foster and his attorney, C. J. Boatner, and stated to them all I remember in connection with it and I am under the impression I gave to them the informa-

tion in reference to the calling out and dismissal of the Lanier suit. I do not think Mr. Foster was in the parish at the time it was done. I have stated, I think, both to Mr. Foster and his attorney in substance, if not in the exact words, what I have stated in my answers to the several interrogatories-in-chief. I did not do this, however, at the request of either of them or any one else. Having been
493 Foster's counsel in connection with matters charged in the petition or bill in this suit, naturally both he and his counsel talked to me about them, and I stated to them all I remembered in connection therewith, and in all probability the interrogatories-in-chief propounded to me herein grew out of said conversations. As to when these conversations occurred I cannot state, as they were had at various times since the pending of the suit. The first, however, I had with Mr. Foster. I think — was had immediately or a short time after the service of the bill upom him and beforeed he had employed counsel, and I recommended him to Mr. Boatner, who now represents him as att'y, and think I wrote a letter to Mr. Boatner in reference to the matter.

To X interrogatory 6th witness answers and says: I think we were.

To X interrogatory 7th witness answers and says: I have spoken from my own knowledge of the facts related, except when I have stated otherwise, and my answers are free from all opinions, conjectures, or hearsay testimony, except when I have given an opinion or spoken from information derived from others, as will be shown in said answers.

494 To X interrogatory 8th witness answers and says: I do not know whatever became of B. H. Lanier nor do I have the most remote idea of his whereabouts. He left the parish, I think, the latter part of the year 1880. I do not know whether he is living or dead, nor do I know of my own personal knowledge any reason why his whereabouts should be concealed. I have heard that he fled the country because of an embezzlement of Government monies, but this was mere rumor and I cannot say that it has any foundation in fact. I do not know it of my personal knowledge or any reliable source, and it may or may not be true.

E. J. DELONY.

Sworn to and subscribed before me this 20th day of May, A. D. 1887.

CHAS. R. EGELLY,
Commissioner.

And after — so sworn the said witness and reduced his answers to writing I caused him to sign the same on each page hereof, as appears herein, in my presence without turning aside to other acts; and I, the said commissioner, do hereby certify that the said witness was of lawful age and sound mind, and that I am not of counsel nor attorney for either of the parties to the suit in contro-
495 versy or in any way interested in the event of said suit.

In testimony whereof I have hereunto signed these presents

and affixed my official seal as United States commissioner, at my office, in the town of Lake Providence, in the western district of Louisiana, on this the 20th day of May, A. D. 1887.

[SEAL.] CHAS. R. EGELLY,
Commissioner.

[Endorsed:] No. 110. U. S. circuit court. Heirs of J. C. Pickett *vs.* George Foster *et als.* Deposition of E. J. Delony, witness for defendant, taken by Chas. R. Egelly, commissioner. Filed in evidence on behalf of defendants July 20th, 1887. J. B. Beattie, d'y clerk.

496 3 X.

Certificate of Cl'k 8th Dist. Court.

STATE OF LOUISIANA, }
Parish of East Carroll. }

I, Wm. Rous, clerk of the 8th district court in and for said parish, do hereby certify that I have carefully examined the records and files of this office and that the same do not show the appointment or qualification of any one as administrator of the succession of James C. Pickett, nor the filing of any inventory in said succession, nor the opening of said succession.

Witness my hand and seal of office this 23rd day of January, A. D. 1886.

WM. ROUS,
Clerk 8th District Court.

[Endorsed:] Certificate of clerk that no adm'r had been appointed or qualified for estate of Pickett. No. 110. U. S. C. C., west. district La. Heirs of J. C. Pickett *vs.* Geo. Foster *et als.* Filed for the purpose of being annexed to a bill of exception on behalf of defendants July 20th, 1887. J. B. Beattie, d'y cl'k.

497 4 X.

Deed of Trust.

UNITED STATES OF AMERICA.

STATE OF TENNESSEE, }
Shelby County, City of Memphis, } *ss:*

Be it known that this sixteenth day of January, in the year of our Lord one thousand eight hundred and sixty-six, before me, J. W. Westcott, a commissioner of the State of Louisiana in and for the city of Memphis, in the county and State first above named, duly commissioned and qualified and residing in said city, personally appeared Mistress Agnes M. Ricketts and Mistress Narcissa J. Bell, the former widow of James P. Ricketts, deceased, late of Woodford county, State of Kentucky, and the latter widow of Clarence W. Bell, deceased, late of Lexington, Fayette county and State of Kentucky, who declared that for the consideration hereinafter named and ex-

pressed they do by these presents grant, bargain, sell, convey, and set over with all legal warranties unto Richard C. Ricketts, Senior, minister, of Midway, Kentucky, as trustee for the uses and purposes following and described herein, and they in fact do hereby convey to said Richard C. Ricketts, Senior, as such trustee—

The undivided $\frac{2}{3}$ interest of the said Mistress Agness M. Ricketts and Narcissa J. Bell in and to the Jonathan Morgan plantation (so called), in parish of Carroll and State of Louisiana, the
498 same being a tract of land or plantation of about eighteen hundred acres and the only one in which the said grantors have any interest in said parish of Carroll, Louisiana, the said two-thirds interest being all the interest which the said parties have under and by virtue of the will of the said Jonathan Morgan, late of said Carroll parish; to have and to hold the said two-thirds of said plantation and its appurtenances to the said Richard C. Ricketts, Sen'r, his heirs and assigns forever, subject to the following trusts:

Whereas the said grantors are indebted to James C. Pickett, gentleman, of Washington, District of Columbia, in the sum of eighteen thousand dollars (18,000), lawful money of the United States, evidenced by the three several promissory notes of the said grantors given to the said James C. Pickett and payable to his order, described as follows, *act:*

One for five thousand five hundred dollars ($5,500), dated Memphis, Tenn., January 1st, A. D. 1866, and due one year after date.

One for six thousand dollars, same date, and due in two years after date ($6,000); and, lastly—

One for six thousand five hundred dollars, due in three years after date aforesaid ($6,500).

And whereas the said grantors are desirous of securing debts
499 to said James C. Ricketts and his assigns, and, in consideration of said debts and of one dollars to said grantors in hand paid in my presence as commissioner aforesaid, have agreed to make this conveyance to a proper person as trustee; and whereas the said Richard C. Ricketts, Senior, of Midway, Ky., is such person and has signified his consent to such trustee, which will be more fully evidenced by his signature hereto affixed:

Now, therefore, the consideration on which the said grant is made and on and for which this trust is created is that the said trustor shall have the property in trust for the payment of the said notes, in whoseever hands they may come, and in case they shall all be paid at maturity of the same this deed shall be null and void and of no effect in law; otherwise it shall be and remain in full force and vigor and the said trustor shall have the right in request of the holder or holders of any of the dishonored paper above named to take possession of the estate hereby conveyed and foreclose this deed of trust and the interests of the said grantors in the property aforesaid, and till default in the payment of said notes or either or any part of them the said grantors shall have the right to the possession of the
500 said estate hereby conveyed, and on full payment of the said notes it is understood and agreed that the said trustee shall

make such reconveyance of said estate hereby conveyed to said grantors as may be necessary under the laws of Louisiana to extinguish the lien of this instrument, and the said James C. Rickett also signs this act or deed of sale in ratification of the agreements and trusts herein created, in acknowledging the same in the city of Washington, Dist. of Columbia; and the said notes above named, executed by the said grantors, are at date hereof and in my presence declared to said James C. Pickett, he signing this instrument in token of their receipt, and the said notes marked "*ne varietur*" and countersigned by me, commissioner aforesaid, for the purpose of identification, and this instrument under the trusts aforesaid is this day delivered to the said Richard C. Ricketts, Sen'r, trustor.

Thus done and passed, in my office, in the city of Memphis, in the presence of Thomas E. S. Cockrell and Moses J. M. Mason, white witnesses of lawful age and domiciled in said city, who
501 hereto signed their names, together with the said parties, at present domiciliated in the same place, and me, the said commissioner, who sign this act and affix hereto my seal as such commissioner, this sixteenth day of January, A. D. 1866.

AGNESS M. RICKETTS.
NARCISSA J. BELL.

Witnesses:
THOS. E. COCKRELL.
MOSES J. M. MASON.

J. W. WESTCOTT,
Commissioner for Louisiana in Tennessee, at Memphis.

I, Richard C. Ricketts, of Midway, Woodford county, Kentucky, do hereby accept the trust named in the foregoing instrument of writing, January 31st.

RICHARD C. RICKETTS.

Witness-:
BEN. F. DRAKE.
JAMES F. DRAKE.

STATE OF KENTUCKY, *Fayette County,* } *ss:*

Be it remembered that on this the 31st of January, 1866, before me, Benj. F. Graves, resident of the city of Lexington, personally appeared Richard C. Ricketts, minister, to me known to be the individual who signed the above, and accepted the within trust as his act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto signed my name and affixed my official seal the day and date above written.

BENJAMIN F. GRAVES,
Commissioner for Louisiana in Kentucky.

I, James C. Pickett, of Washington city and District of Columbia, do hereby accept and ratify all the provisions of the foregoing
502 and annexed instrument of writing, constituting Richard C. Ricketts trustee for certain purposes therein expressed.

Witness my hand and seal this 10th day of February, 1866.

JAMES C. PICKETT.

Witness-:

JOHN D. BLON.
ZACH. B. BROOKE.
JOHN S. HOLLINGSHEAD.

DISTRICT OF COLUMBIA, } ss:
City and County of Washington, }

Personally appeared before me, a notary public in and for said county and District, James C. Pickett, who acknowledged that he voluntarily signed the foregoing instrument for the purpose therein mentioned; and I certify also that John D. Blon and Zach. B. Brooke, witnesses to the signature of said Pickett, are to all intents legal and sufficient persons.

In witness whereof I have hereunto signed my name and affixed my official seal the day and date above written.

JOHN S. HOLLINGSHEAD,
Notary Public.

DISTRICT OF COLUMBIA:

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, hereby certify that John S. Hollingshead, whose genuine signature is subscribed to the foregoing certificate of acknowledgment, was, at the time of signing and attesting the same, a notary public for said District, duly commissioned and qualified and authorized to take acknowledgements and to administer oaths, and that his attestation thereto is according to law.

Witness my hand and the seal of said court this 10th day of February, 1866

R. J. MEIGS, *Clerk.*

503 STATE OF LOUISIANA, }
Parish of Carroll. }

Before me, David L. Morgan, deputy recorder, duly appointed in and for the parish of Carroll, State of Louisiana, personally came and appeared Mrs. Agness M. Ricketts and Mrs. Narcissa J. Bell, who, being duly sworn, declared and said that the signatures of their names hereto attested in the foregoing deed *was* written by them in person on the day and date therein set forth, and that the same are their own genuine signatures.

Sworn to and subscribed before me on the 6th day of March, A. D. 1866.

DAVID L. MORGAN,
Deputy Recorder.
MRS. AGNESS M. RICKETTS.
MRS. NARCISSA J. BELL.

Endorsed in red ink across the face of the deed: Erased in full evidence — the return of the sheriff in suit of Ferd. M. Goodrich, tutor, *vs.* Agnes M. Ricketts & Narcissa J. Bell, on file in the office of the

clerk of the district court, & the demand of Ferd. M. Goodrich that the mortgage be erased. Floyd, La., December 19th, 1868. A. G. Beldon, d'y recorder.

THE STATE OF LOUISIANA, }
Parish of East Carroll. }

504 I, William Rous, clerk of the eighth judicial district of Louisiana and *ex officio* recorder in and for said parish, do hereby certify that the above and foregoing is a true and correct copy of the deed of trust of Agnes M. Ricketts and Narcissa J. Bell to Richard C. Ricketts, trustee, as rendered in my office, in Mortgage Book H, page- 352 & 353, under date of March 12th, 1866; and I do further certify that the endorsement given below said deed of trust and herein above written is written in red ink across the face of the said recorded deed of trust and of the record in the words and figures therein named in said Mortgage Book "H," on page 352.

In witness whereof I hereunto sign my name and affix [SEAL.] the seal of my office, in the town of Lake Providence, parish and State aforesaid, this the 23rd day of January, A. D. 1886.

WM. ROUS,
Clerk 8th District Court & ex Officio Recorder.

Filed on behalf of defendants July 20th, 1887.

J. B. BEATTIE, *D'y Cl'k.*

505 5 X.

Act of Mortgage from Mrs. A. M. Scanlan to Foster & Gwyn.

STATE OF LOUISIANA, }
Parish of Carroll. }

Be it known that on this the 23d day of May, A. D. 1878, before me, Donalson C. Jenkins, a notary public and deputy recorder in and for said parish, duly commissioned and sworn, personally appeared Mrs. Agnes M. Scanlan, herein authorized and assisted by her husband, R. M. Scanlan, both of said parish of Carroll, and further authorized by his honor Wade H. Hough, judge of the 13th district, whos- certificate of authorization is hereunto annexed, who declared unto me, notary, and said that she is justly and truly indebted unto Messrs. Foster & Gwyn, a commercial firm of the city of New Orleans, La., in the sum of nineteen thousand ($19,000) dollars, for which said sum she has this day executed her promissory note of even tenor and date herewith, payable one year after date, and bearing 8% p'r an-um interest from date hereof until paid, which said note after being prepared by me, notary, was delivered to Mr. Geo. Foster, one of said firm of Foster & Gwyn, here present, acknowledging receipt and accepting this act in all its parts & clauses.

Now, in order to secure the full and punctual payment of said

notes, together with all accrued and eventual interest, the
506 said Mrs. Scanlan, acting under her said authority and for herself, declared that she does by these presents mortgage, affect, and specially hypothecate in favor of the said Foster & Gwyn and to the future holder or holders of said note the following-described property, to wit:

Lot No. 1 and the west or upper half of lot No. 2, in township 19, range 14 east, together with lot No. 44 and all that part of lot No. 43 and lot No. 48, in township No. 19, range 13 east (which lies on the east side of a line running through said lots No. 43 & 48), as will be shown by reference to plat of survey filed to-day with an act of partition made by and between John H. Green and the said Mrs. Agnes M. Scanlan, embracing four hundred and seventy-two $\frac{41}{100}$ acres, together with the north or upper part of lot No. 7 as shown by the line running through said lot No. 7, containing one hundred and fifty-seven $\frac{15}{100}$ acres, together with the east portion of the north half of section No. 56 and sixty acres contained in section No. 51, township 19, range 13 east, embracing one hundred and thirty-five $\frac{25}{100}$ acres, as shown by said plat of survey, to which reference has before been made; in all, seven hundred and sixty-four $\frac{81}{100}$ acres.

And in case it shall become necessary to institute legal
507 *legal* proceedings for the collection of the above-mentioned note, then 5% additional is to be added to the amount of this mortgage herein specified for attorney's fees.

The mortgage certificate required by article 3328 of the Civil Code is hereby dispensed with and me, notary, held harmless for its non-production at the passage of this act.

Thus done and passed in said parish of Carroll in presence of Ferd. M. Goodrich & John H. Green, lawful witnesses, who sign hereto with said parties and me, notary, this the day, month, and year above written.

A. M. SCANLAN.
R. M. SCANLAN.
GEO. FOSTER.
D. C. JENKINS,
Notary Public.

FERD. M. GOODRICH.
J. H. GREEN.

STATE OF LOUISIANA, }
Parish of Carroll. }

I hereby certify that the foregoing and within mortgage and authorization is of due record in my office in Mortgage Book I, folio 240 & 241.

Given under my hand and officially sealed this the 26th day of May, A. D. 1870.

T. B. RUSCAN, *Recorder.*

508 STATE OF LOUISIANA, }
Parish of Carroll. }

I hereby certify the within and foregoing to be a true copy of the original mortgage and authorization on file and of record in my office. Given under my hand and seal of office on this the 26th day of May, A. D. 1870.

T. B. RUSCAN, *Recorder.*

[Endorsed:] No. 110. Mortgage. Agnes M. Scanlan to Foster & Gwyn. U. S. circuit court, western dist. La. Heirs J. C. Pickett *vs.* Geo. Foster *et als.* Filed in evidence on behalf of defendants July 20th, 1887. J. B. Beattie, d'y clerk.

509 *Act of Mortgage.*

STATE OF LOUISIANA, }
Parish of Carroll. }

Be it known that on this the 23rd day of May, A. D. 1870, before me, Donaldson C. Jenkins, notary public and deputy recorder in & for said parish, duly commissioned and sworn, personally appeared John H. Green, a resident of said parish, who declared unto me, notary, that he is justly indebted unto Foster & Gwyn, a commercial firm of the city of New Orleans, in the sum of ten thousand dollars, lawful money, for which said sum he, the said Green, has this day executed his promissory note of even tenor and date herewith, bearing interest at the rate of 8 % per annum, payable to his own order and by him endorsed, payable 12 mos. after date; which said note, after being paraphed by me, notary, to identify it with this act, was delivered to Mr. Geo. Foster, of the firm of Foster and Gwyn, who is here present, and acknowledges due receipt thereof.

Now, in order to secure the full and punctual payment of said note at maturity, together with all accrued and eventual interest, the said Green declared that he does, by these presents, mortgage,
affect, and special-y hypothecate in favor of the said Foster &
510 Gwyn and to secure to the future use and benefit of any and all future holder or holders of said note the following-described property, to wit: Lots 41 & 42; all that part of lots 43 & 48 as lies on the west or upper side of a line running through said lots No. 43 & 48, embraces four hundred & ninety-two $\frac{41}{100}$ acres, as shown by the survey made by Robert Boyd in the month- of December & January, 1870, together with all of section 8 and that part of section 7, in township 19, range 14 east, as lies on the south side of a line running through said lot No. 7, so as to embrace one hundred and fifty-seven $\frac{15}{100}$ acres, together with two hundred and forty-three $\frac{41}{100}$ acres of the north half of section 56, the same land being more fully and accurately described in act of partition this day made before me, reference to which is hereby *read*, and to the plat of survey therewith filed, hereby binding himself not to mortgage, alienate, or in any way encumber said property to the prejudice of this act.

The mortgage certificate required by act 3328 of the Civil Code is

hereby dispensed with and me, notary, held harmless for its non-production at the passage of this act.

511 Mr. George Foster, of said firm of Foster & Gwyn, here appeared and accepts this act with all its parts and clauses; and in case it should become necessary to institute legal proceedings for the collection of the above-described note 5% attorney's fees is to be added to am't said note and paid by the said Green.

Thus done and passed in said parish of Carroll in presence of Ferd. M. Goodrich and R. M. Scanlan, lawful witnesses, who sign with said parties and me, notary, this the day, month, and year above written.

J. H. GREEN.
GEORGE FOSTER.
D. C. JENKINS,
Notary Public.

FERD. M. GOODRICH.
R. M. SCANLAN.

STATE OF LOUISIANA, }
Parish of East Carroll. }

I, Wm. Rous, clerk of the 8th district court and *ex officio* recorder in and for said parish, duly commissioned and qualified, do hereby certify that the above and foregoing is a true and correct copy of the mortgage now of record in my office, under date of May 26th, 1870, in Mortgage Record "I," folios —.

512 In witness whereof I hereunto affix my name officially and the seal of my office on this the 19th day of March, [SEAL.] A. D. 1886.

WM. ROUS,
Clerk 8th Dist. Court and ex Officio Recorder.

[Endorsed:] No. 110. U. S. circuit court, western dist. La. Heirs J. C. Pickett *vs.* Geo. Foster *et als.* Filed in evidence on behalf of defendants. J. B. Beattie, d'y cl'k. John H. Green, mortgage, to Foster & Gwyn.

513 7 X.

Last Will, etc., of Mrs. I. G. Putnam.

I, Isabella Gwyn Putnam of the city of Brooklyn, in the county of Kings, and State of New York, widow of the late John B. Putnam, mindful of the uncertainties of human life, and being in such a critical condition, feel as though I ought to make some disposition of what property belongs to me personally. It will not add or take away one day from my life, and I yet trust a merciful God will spare me many more days with these my dear friends, therefore I publish and declare this my last will and testament in manner following

First after the payment of my just debts and funeral expenses I direct that suitable stones shall be erected in the family lot in the

town of Danvers in the county of Essex, and State of Massachusetts, and the place fixed up nicely.

Second, I give, devise, and bequeath to my sister Mary Jane Gwyn, all the rest, residue and remainder of my money also my bed-room furniture, including carpet and writing desk, and I also direct that my sister Mary Jane Gwyn take immediate pos-
514 session of all the letters and papers in the said writing desk, to do as she pleases with them, I trust them to her as sacred treasures.

Third, I give, devise, and bequeath to my mother-in-law, Abigail Putnam the sum of two hundred and fifty — in United States currency.

Fourth, I give, devise and bequeath to my sister-in-law Abbie Putnam my sewing machine.

Fifth I give, devise, and bequeath to my brother Samuel Gwyn my piano.

Sixth. I give, devise, and bequeath to my sister-in-law Margaret Gwyn my crib.

In witness whereof I, Isabell Gwyn Putnam have, to this my last will and testament, consisting of one sheet of paper, subscribed my name and set my seal this thirteenth day of September, A. D. 1870.

ISABELLA G. PUTNAM. [SEAL.]

The word "money" interlined before signing in the 19th line.

515 Subscribed by the testatrix in the presence of each of us, and at the same time declared by her to us to be her last will and testament, and therefore we, at the request of the testatrix, sign our names hereto as witnesses this thirteenth day of September, A. D. 1870, at the city of St. Paul, in the county of Ramsey and State of Minnesota.

GEORGE W. MORRELL,
No. 20 *Wabashaw Street, St. Paul, Min.*
GEO. H. PARKER,
No. 1 *Franklin Square, St. Paul, Minn.*

516 Kings County Surrogate's Court.

In the Matter of Proving the Last Will and Testament of ISABELLA G. PUTNAM, Late of the City of Brooklyn, Deceased.

KINGS COUNTY, *To wit:*

Catharan G. Foster, of the city of Brooklyn, being duly sworn and examined before William D. Veeder, surrogate of the county of Kings, doth depose and say that she was well acquainted with Isabella G. Putnam, now deceased; that the subscription of the name of Isabella G. Putnam, deceased, at the end of the instrument now shown to this deponent and offered for probate as the last will and testament of the said Isabella G. Putnam, deceased, and bearing date the thirteenth day of September, in the year one thousand eight hundred and seventy, was made by the said deceased in the presence of

George W. Morrill, George H. Parker, and of this deponent; that at the time of making such subscription the said Isabella G. Putnam, deceased, declared the said instrument so subscribed by her to be her last will and testament, and that thereupon the said
517 George W. Morrell and George H. Parker signed their names as witnesses at the end of said instrument at the request of the said Isabella G. Putnam, deceased, and in her presence, and that the said Isabella G. Putnam, deceased, at the time of executing the said instrument was over the age of twenty-one year-, of sound mind and memory, and not under any restraint, and that deponent was visiting at St. Paul's at the time of the execution of said will, and was also present and saw said George W. Morrell and George H. Parker sign their names as witnesses, and they both reside at St. Paul, Minnesota.

Subscribed and sworn this 16th day of June, A. D. 1871.

CATHARINE G. FOSTER.

WILLIAM D. VEEDER, *Surrogate.*

518 7 X.

Kings County Surrogate's Court.

In the Matter of Proving the Last Will and Testament of ISABELLA G. PUTNAM, Late of the City of Brooklyn, Deceased.

KINGS COUNTY, *To wit:*

George Foster, of the city of Brooklyn, being duly sworn and examined before William D. Veeder, surrogate of the county of Kings, doth depose and say that he is well *well* acquainted with George W. Morrell & George H. Parker, of the city of St. Paul, Minnesota, and with their manner and style of handwriting, having often seen them write, and that he verily believes that the signatures "George W. Morrell" & "Geo. H. Parker," signed as witnesses to the instrument in writing now produced and show- to the deponent, bearing date the thirteenth day September, in the year one thousand eight hundred and seventy, purporting to be the last will and testament of said Isabella G. Putnam, deceased, is the true and genuine handwritings and signatures of the said George W. Morrell & George H. Parker, and that the said George W. Morrell & George H. Parker reside at St. Paul, Minnesota, and are not now within the
519 jurisdiction of the State of New York, and that deponent was also well acquainted with Isabella G. Putnam, deceased, and with her manner and style of handwriting, having often seen her write, and that the signature "Isabella G. Putnam" signed at the end of said instrument is the true and genuine handwriting and signature of said Isabella G. Putnam, and that said Isabella G. Putnam died at the city of St. Paul, Minnesota, while on a visit on the 23rd day of September, 1870.

GEORGE FOSTER.

Subscribed and sworn this 16th day of June, A. D. 1871.

WILLIAM D. VEEDER, *Surrogate.*

520 KINGS COUNTY, *ss:*

It appearing upon the proofs duly taken in respect to the last will and testament of Isabell G. Putnam, late of the county of Kings, deceased, that the said will was duly executed, and that the said Isabella G. Putnam, deceased, at the time she executed the same was in all respects competent to bequeath personal estate and not under any restraint, the said will and the proofs and examinations taken thereon are hereby recorded, signed, and certified by me pursuant to the Revised Statutes this sixteenth day of June, in the year one thousand eight hundred and seventy-one.

WM. D. VEEDER, *Surrogate.*

521 STATE OF NEW YORK, }
County of Kings. }

Surrogate's Court.

I, Judah B. Voorhees, clerk of the surrogate's court in and for the said county of Kings, do hereby certify that I have compared the foregoing copy of the record of the last will and testament and the propate thereon of Isabella G. Putnam, late of the city of Brooklyn, deceased, with the original record thereof, now remaining in this office, and have found the same to be a correct transcript therefrom and of the whole of such original record.

In testamony whereof I have hereunto set my hand and [SEAL.] affixed the seal of the surrogate's court this seventh day of July, in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the ninety-sixth.

[Internal revenue stamp, 5 cts.]

JUDAH B. VOORHEES,
Clerk of the Surrogate's Court.

STATE OF NEW YORK, }
Kings County, } *ss:*

I, William D. Veeder, surrogate of Kings county and presiding magistrate of the surrogate court, do hereby certify that Judah
522 B. Voorhees, whos- signature is affixed to the foregoing certificate, is clerk to the surrogate's court, and that the foregoing exemplification is attested in due form of law, and that the seal hereto affixed is the seal of said surrogate's court, and that said exemplification would be received in evidence in the several courts of this State.

Witness my hand and seal of said surrogate's court this [SEAL.] seventh day of July, one thousand eight hundred and seventy-one.

[Internal revenue stamp, 5 cts.]

W. D. VEEDER, *Surrogate.*

[Endorsed:] Last will and testament of Isabella G. Putnam, deceased. Exemplified copy. No. 110. U. S. circuit court, western

dist. La. Heirs J. C. Pickett *vs.* George Foster *et als.* Filed in evidence on behalf of defendants, July 20th, 1887. J. B. Beattie, d'y clerk.

523 *Extract of Minutes.*

WEDNESDAY, 20 *July*, 1887.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et als.* } No. 110.

Upon conclusion of the evidence and argument of counsel the case was taken under advisement by the court.

524 & 525 *Extract of Minutes.*

MONDAY, *February* 27*th*, 1888.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

HEIRS J. C. PICKETT
vs.
GEO. FOSTER *et al.* } No. 110.

Judgment for defendants. See decree.

526 *Extract of Minutes.*

FRIDAY, *March 9th*, 1888.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

HEIRS J. C. PICKETT
vs.
GEO. FOSTER *et als.* } No. 110.

Ordered by the court that this cause pend as if on motion for a new trial.

527 *Extracts of Minutes.*

MONDAY, *October* 8*th*, 1888.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

HEIRS OF J. C. PICKETT
vs.
GEO. FOSTER *et als.* } No. 110.

Motion for rehearing filed herein on behalf of complainants and same assigned for argument to-day.

As per assignment, the motion for a rehearing filed herein on behalf of complainants came on to be heard, and after argument by counsel the same was taken under advisement by the court.

528 *Petition for Rehearing.*

U. S. Circuit Court, Western District of Louisiana, Sitting at Monroe.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et als.* } No. 110.

The petition of Joseph Desha Pickett and Theodore John Pickett, complainants in the above-entitled suit, respectfully represents that they are informed and that they believe that there is error in the opinion and judgment rendered at this term of the court in this case on the grounds following, to wit:

That the judgment and decree is contrary to equity, the law, and the evidence.

That the public administrator, Lanier, an officer of the State, having instituted a suit, is presumed to be authorized to act, and whether he had qualified according to law to act in the case or not he was a *de facto* officer and his qualification could not be questioned collaterally, & his successor, Foster, could not abandon or dismiss the suit to the injury of the succession, plaintiff in said suit,
529 without being responsible; that the registry laws of Louisiana are intended to protect honest buyers and not conspirators to defraud the mortgage creditors, & the want of reinscription is not set up in the answer of Mrs. Foster, & she had no right to set it up in this case, and it is error to say that the deed of trust registered in 1866 was extinguished by the laps- of ten years thereafter. The only effect of failure to reinscribe within the ten years is *perenption*—that is, the mortgage loses its rank or priority—and subsequent valid mortgages recorded anterior to the reinscription of the mortgage would prime it.

But there exists no mortgage or title which is superior in rank to complainants' on the property in question.

The deed of trust was reinscribed in 1885. None of the other alleged mortgages have been reinscribed, & the title of Mrs. Foster is a nullity.

The suit instituted by Lanier, public administrator, in behalf of the heirs of Pickett against the makers of the notes secured by the mortgage and Ezra Wheeler & Co. & Geo. Foster, who — then
530 in possession of said plantation, filed in 1873, interrupted the prescription against said notes & mortgage, not only against said defendants, but also against their assigns.

The sales under the Goodrich judgment *is* his ward's, and the succession sales of the mortgaged property to Geo. Foster, Ezra Wheeler & Co., Gwyn, & Mrs. Foster were all nullities.

The judgment in favor of Mrs. Foster against her husband and the sale of the property under her judgment were nullities and

fraudulent transactions and could not affect the property mortgaged to the complainants, and they have no right to set up prescription against their mortgage or its want of reinscription.

Mrs. Foster's judgment against her husband was without any legal foundation in Louisiana, and its validity has not been proved when attacked in this case, & it was obtained through fraud and collusion with her husband, George Foster, & was not advertised or published, & was not attempted to be executed for nearly two years, & is therefore a nullity.

531 The sale of the property under said judgment was fraudulent, null, and void, even if the judgment had been valid. She paid no price, but assumed the debts of her husband, which is prohibited; that the said Foster, public administrator, was the trustee of the plaintiffs, so far as the suit of Lanier, public administrator, *vs.* Ezera Wheeler & Co. *et als.* is concerned, and he was bound to at least notify them of his intention not to prosecute the suit and to take no action therein until they had been notified of his refusal to accept the trust which his predecessor, Lanier, had accepted.

That the pendency of that suit suspended prescription during its pendency, even if it should be considered as dismissed by Foster, public adm'r, on 4th Dec., 1875, & within ten years thereafter. This suit was filed, to wit, on 30 Nov., 1885, which again interrupted prescription, but in equity and fact the suit was never properly discontinued, and the prescription & want of registry alleged against the mortgage are untenable.

Wherefore plaintiffs pray for a rehearing and for general relief, etc.

JNO. T. LUDELING, *Solicitor.*

532 Endorsed: U. S. circuit court, western district —. No. 110. Heirs of J. C. Pickett *vs.* Geo. Foster *et als.* Petition for rehearing. Filed Oct. 8th, 1888. J. B. Beattie, d'y cl'k.

533 *Extract of Minutes.*

TUESDAY, 23*rd of Oct.*, 1888.

Court met pursuant to adjournment.

Present: His Hon. Aleck Boarman, dist. judge, presiding.

HEIRS J. C. PICKETT
vs.
GEO. FOSTER *et al.*

Motion for rehearing overruled. Judgment for def'ts; see decree. Agreement of counsel as to costs filed.

Motion for appeal filed. Appeal allowed and same made returnable into the Supreme Court of the United States on the first Monday of its next regular term. Appeal bond fixed in the sum of five hundred dollars.

534 1 Y.

Decree.

U. S. Circuit Court, Western Dist. La.

HEIRS J. C. PICKETT
vs.
GEO. FOSTER *et als.*

The cause having come on regular-*by fair* trial, and the court having duly considered the law and evidence adduced on the trial hereof, and — being in favor of the defendants, it is by reason thereof ordered, adjudged, and decreed that plaintiffs' demand be rejected and the bill of complaint herein be dismissed at cost of complainant-, to be taxed.

Done, read, and signed in open court this 23rd day of October, 1888.

ALECK BOARMAN, *Judge.*

It is agreed that costs in favor of defendants shall be for one docket fee, 25.00, and one ——; $250; for counsel; 5.00 for costs— 27.50 costs.

A. B.

534½ [Endorsed:] No. 110. United States circuit court. Heirs J. C. Pickett *vs.* Geo. Foster *et al.* Judgment. Filed Oct. 23rd, 1888. J. B. Beattie, d'y clerk.

2 Y.

535 *Motion & Order for an Appeal.*

U. States Circuit Court, Western District of Louisiana.

HEIRS OF PICKETT
vs.
FOSTER *et als.* } No. 110.

The above-named complainants, considering themselves aggrieved by the final decree entered on the 23rd day of April, 1888, in the above-entitled cause, do hereby appeal therefrom to the Supreme Court of the United States, & they pray that *his* appeal may be allowed & that a transcript of the records, proceedings, & evidence in the cause, duly authenticated, may be sent to the Supreme Court according to law, & that the amount of a bond for *acts* may be fixed.

JOHN T. LUDELING,
Solicitor for Complainants.

Approved, & it is ordered that the amount of the bond be fixed at five hundred dollars, conditioned according to law, this 23 day of October, 1888, in open court.

ALECK BOARMAN, *Judge.*

536 [Endorsed:] No. 110. United States circuit court, fifth circuit, western dist. of La. Heirs of Pickett *vs.* Foster *et als.* No. —. In equity. Petition for appeal, &c. Filed Oct. 23, 1888. Aleck Boarman, judge.

537 3 Y.

Appeal Bond.

UNITED STATES OF AMERICA:

Know all men by these presents that we, Joseph Desha Pickett and Theodore John Pickett, sole heirs-at-law of James C. Pickett, deceased, complainants, as principal-, and William G. Wyly, as surety, are held and firmly bound, jointly and severally, unto George Foster, Mary J. Gwyn, wife of George Foster, William A. Gwyn, Mrs. Narcissa J. Green, Mrs. Agnes M. Scanlan, and respondents in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said George Foster, Mary J. Gwyn, wife of Geo. Foster, William A. Gwyn, Mrs. Narcissa J. Green, Mrs. Agness M. Scanlan, and their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the nineteenth day of January, in the year of our Lord eighteen hundred and eighty-nine.

Whereas the said heirs of J. C. Pickett having heretofore, to wit, on the — day of October, 1888, taken an appeal to the Supreme Court of the United States from and to reverse the decree
538 rendered on the twenty-third day of October, 1888, by the circuit court of the United States for the fifth circuit, holding sessions in and for the western district of Louisiana, in the suit of The Heirs of J. C. Pickett *vs.* George Foster *et als.*, No. 110 of the docket thereof, at Monroe, Louisiana:

Now, the condition of the above obligation is that if the above-bounden complainants, The Heirs of J. C. Pickett, shall prosecute their said appeal to effect and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in the presence of—
W. C. McREA.
C. S. WYLY.

JOSEPH DESHA PICKETT, [L. S.]
By W. G. WYLY, *Att'y-in-Fact.*
THEODORE JOHN PICKETT, [L. S.]
By W. G. WYLY, *Att'y-in-Fact.*
(Surety.) W. G. WYLY. [L. S.]

Approved:
ALECK BOARMAN, *Judge.*

539 UNITED STATES OF AMERICA, *Western District of Louisiana,* } *ss:*

Personally appeared William G. Wyly, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the parish of East Carroll, western district of Louisiana, and is worth the full sum of five thousand dollars over and above all of his debts and liabilities and property exempt from execution.

W. G. WYLY.

Subscribed and sworn before me this 19th day of January, 1889.

CHAS. R. EGELLY,
Commissioner U. S. Circuit Court, Western District of Louisiana.

[Endorsed:] No. 110. United States circuit court, western district of Louisiana. Heirs of J. C. Pickett *vs.* George Foster *et als.* Bond for appeal. Filed Feb'y 4th, 1889. J. B. Beattie, clerk.

540 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

[Seal U. S. Circuit Court for the Western Dist. of La.]

The President of the United States to George Foster, Esqr., Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at the city of Washington, D. C., on the second Monday of October, 1889, pursuant to an order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and the western district of Louisiana, wherein Heirs J. C. Pickett are complainants and George Foster *et als.* are defendants, being cause No. 110 on the docket of the United States circuit court, fifth judicial circuit and western district of Louisiana, to show cause, if any there be, why the judgment rendered against the said heirs of J. C. Pickett as in said order of appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 26th day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

[Seal U. S. Circuit Court for the Western Dist. of La.]

ALECK BOARMAN, *Judge.*

[Endorsed:] United States circuit court, western district of Louisiana. No. 110. Heirs of J. C. Pickett *vs* George Foster *et al.* Citation of appeal to Geo. Foster.

Marshal's Return.

U. S. Circuit & District Courts, Western Dist. of La.

On this the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and eighty-nine, personally appeared

S. B. Willis, U. S. deputy marshal for the western district of La., before me, the subscriber, H. Morse, deputy clerk U. S. circuit court, 5th circuit and western district of La., and makes oath that he delivered a true copy of the within citation of appeal to Mr. C. J. Boatner, of the law firm of C. J. and J. S. Boatner, att'ys of record in the case of Heirs of J. C. Pickett *vs.* Geo. Foster *et al.*, No. 110 on the docket of the U. S. circuit court, 5th circuit, western district of La., by handing the same to him in person at his office, in the city of Monroe, La., on the twenty-ninth day of April, A. D. 1889, at 2 o'clock p. m.

Serving cit., 1.00.

S. B. WILLIS,
D'y U. S. Marshal, Western District La.

Sworn to and subscribed before me this the twenty-ninth day of April, A. D. 1889.

[Seal U. S. Circuit Court for the Western Dist. of La.]

H. MORSE,
Deputy Clerk.

541 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

The President of the United States to Mrs. Mary J. Foster, Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at the city of Washington, D. C., on the second Monday of October, 1889, pursuant to an order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and the western district of Louisiana, wherein Heirs J. C. Pickett are complainants and George Foster *et als.* are defendants, being cause No. 110 on the docket of the United States circuit court, 5th circuit and western district of Louisiana, to show cause, if any there be, why the judgment rendered against the said heirs of J. C. Pickett, as in said order of appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 26th day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

[Seal U. S. Circuit Court for the Western Dist. of La.]

ALECK BOARMAN, *Judge.*

[Endorsed:] United States circuit court, western district of Louisiana. No. 110. Heirs J. C. Pickett *vs.* George Foster *et als.* Citation of appeal to Mrs. Mary J. Foster.

Marshal's Return.

On this the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and eighty-nine, personally appeared

S. B. Willis, U. S. deputy marshal for the western district of La., before me, the subscriber, H. Morse, deputy clerk U. S. circuit court, 5th circuit and western district of La., and makes oath that he delivered a true copy of the within citation of appeal to Mr. C. J. Boatner, of the law firm of C. J. and J. S. Boatner, att'y- of record in the case of Heirs J. C. Pickett *vs.* Geo. Foster *et al.*, No. 110 on the docket of the U. S. circuit court, 5th circuit, western district of La., by handing the same to him at his office, in the city of Monroe, La., on the twenty-ninth day of April, A. D. 1889, at 2 o'clock p. m.

Serving cit., 1.00.

S. B. WILLIS,
D'y U. S. Marshal, Western District La.

Sworn to and subscribed before me this the twenty-ninth day of April, A. D. 1889.

[Seal U. S. Circuit Court for the Western Dist. of La.]

H. MORSE,
D'y Cl'k U. S. Courts.

542 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

The President of the United States to Augustus Ireland, of New York, Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at the city of Washington, D. C., on the second Monday of October, 1889, pursuant to an order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and the western district of Louisiana, wherein Heirs J. C. Pickett are complainants and George Foster *et al.* are defendants, being cause No. 110 on the docket of the United States circuit court, 5th circuit and western district of Louisiana, to show cause, if any there be, why the judgment rendered against the said heirs J. C. Pickett, as in said order of appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 26th day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

ALECK BOARMAN, *Judge.*

[Endorsed:] United States circuit court, western district of Louisiana. No. 110. Heirs J. C. Pickett *vs.* George Foster *et al.* Citation of appeal.

Marshal's Return.

On the 2d day of May, 1889, personally appeared P. B. Weaks, U. S. deputy marshal for the western district of Louisiana, before me, the subscriber, J. B. Beattie, clerk U. S. circuit court, 5th circuit,

western district of Louisiana, and makes oath that he failed to find the within-named Augustus Ireland, who is said to be a resident of New York and not in his district, and that he posted a certified copy of this citation of appeal on the door of the Federal court-room in Shreveport, La.

P. B. WEAKS,
D'y U. S. Marshal.

Sworn to and subscribed before me this the 2d day of May, A. D. 1889.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. B. BEATTIE, *Clerk.*

543 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

The President of the United States to Thomas Roundy, of New York, Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at the city of Washington, D. C., on the second Monday of October, 1889, pursuant to an order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and the western district of Louisiana, wherein Heirs J. C. Pickett are complainants and George Foster *et al.* are defendants, being cause No. 110 on the docket of the United States circuit court, 5th circuit and western district of Louisiana, to show cause, if any there be, why the judgment rendered against the said heirs J. C. Pickett as in said order of appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 26th day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

ALECK BOARMAN, *Judge.*

[Endorsed:] United States circuit court, western district of Louisiana. No. 110. Heirs J. C. Pickett *vs.* George Foster *et al.* Citation of appeal.

Marshal's Return.

On the 2d day of May, 1889, personally appeared P. B. Weaks, U. S. dep'ty marshal for the western district of Louisiana, before me, J. B. Beattie, clerk U. S. circuit court, 5th circuit, western district of Louisiana, and makes oath that he has failed to find the within-named Thomas Roundy, who is said to be a resident of New York and out of his district, and that he posted a certified copy of this citation of appeal on the door of the Federal court-room in Shreveport, La.

P. B. WEAKS, *D'y Mar.*

Sworn to and subscribed before me this the 2nd day of May, A. D. 1889.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. B. BEATTIE, *Clerk.*

544 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

The President of the United States to Ezra Wheeler, of New York, Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at the city of Washington, D. C., on the second Monday of Oct'r, 1884, pursuant to an order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and the western district of Louisiana, wherein Heirs J. C. Pickett are complainants and George Foster *et als.* are defendants, being cause No 110 on the docket of the United States circuit court, 5th circuit and western district of Louisiana, to show cause, if any there be, why the judgment rendered against the said heirs J. C. Pickett, as in said order of appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 26th day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

[Seal U. S. Circuit Court for the Western Dist. of La.]

ALECK BOARMAN, *Judge.*

[Endorsed:] United States circuit court, western district of Louisiana. No. 110. Heirs J. C. Pickett *vs.* George Foster *et als.* Citation of appeal.

Marshal's Return.

On the 2d day of May, 1889, personal-y appeared P. B. Weaks, U. S. deputy marshal for the western district of Louisiana, before me, the subscriber, J. B. Beattie, clerk U. S. circuit court, 5th circuit and western district of Louisiana, and makes oath that he failed to find the within-named Ezra Wheeler, who is said to be a resident of New York, and is out of his district, and that he posted a certified copy of this citation of appeal on the door of the Federal court-room in Shreveport, La.

P. B. WEAKS, *D'y Mar.*

Sworn to and subscribed before me this the 2d day of May, A. D. 1889.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. B. BEATTIE, *Clerk.*

545 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

The President of the United States to Wm. A. Gwyn, Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at the city of Washington, D. C., on the second Monday of October, 1889, pursuant to an order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and the western district of Louisiana, wherein Heirs J. C. Pickett are complainants and George Foster *et al.* are defendants, being cause No. 110 on the docket of the United States circuit court, 5th circuit and western district of La., to show cause, if any there be, why the judgment rendered against the said heirs of J. C. Pickett as in said order of appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 26th day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

ALECK BOARMAN, *Judge.*

[Endorsed:] United States circuit court, western district of Louisiana. No. 110. Heirs J. C. Pickett *vs.* Geo. Foster *et al.* Citation of appeal.

Marshal's Return.

On the 2d day of May, 1889, personally appeared P. B. Weaks, d'y U. S. marshal for the western district of Louisiana, before me, J. B. Beattie, clerk U. S. circuit court, 5th circuit, western district Louisiana, and makes oath that he has failed to find the whereabouts of the within-named Wm. A. Gwyn, and that he posted a certified copy of this citation of appeal on the door of the Federal court-room in the city of Shreveport, La.

P. B. WEAKS,
D'y U. S. Marshal.

Sworn to and subscribed before me this the 2nd day of May, A. D. 1889.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. B. BEATTIE, *Clerk.*

546 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

The President of the United States to Mrs. Narcissa J. Green, of St. Louis, Missouri, Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at the city of Washington, D. C., on the second Monday of Oct., 1889, pursuant to an order of ap-

peal filed in the clerk's office of the circuit court of the United States for the fifth circuit and the western district of Louisiana, wherein Heirs J. C. Pickett are complainants and George Foster *et al.* are defendants, being cause No. 110 on the docket of the United States circuit court, 5th circuit and western district of Louisiana, to show cause, if any there be, why the judgment rendered against the said heirs J. C. Pickett, as in said order of appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 26th day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

ALECK BOARMAN, *Judge.*

[Endorsed:] United States circuit court, western district of Louisiana. No. 110. Heirs J. C. Pickett *vs.* George Foster *et als.* Citation of appeal.

Marshal's Return.

On the 2d day of May, 1889, personally appeared P. B. Weaks, U. S. deputy marshal for the western district of Louisiana, before me, the subscriber, J. B. Beattie, clerk U. S. circuit court, 5th circuit, western dist. of Louisiana, and makes oath that he has failed to find the within-named Mrs. Narcissa J. Green, who is said to reside in St. Louis, Mo., and out of his district, and that he posted a copy of this citation of appeal on the door of the Federal court-room in Shreveport, La.

P. B. WEAKS,
D'y U. S. Marshal.

Sworn to and subscribed before me this the 2nd day of May, A. D. 1889.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. B. BEATTIE, *Clerk.*

547 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

The President of the United States to Mrs. Agnes M. Scanlan, of St. Louis, Missouri, Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at the city of Washington, D. C., on the second Monday of October, 1889, pursuant to an order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and the western district of Louisiana, wherein Heirs J. C. Pickett are complainants and George Foster *et als.* are defendants, being cause No. 110 on the docket of the United States circuit court, 5th circuit and western district of Louisiana, to show cause, if any there be, why the judgment rendered against the said heirs J. C. Pickett, as in said order of appeal mentioned, should not be

corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 26th day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

ALECK BOARMAN, *Judge.*

[Endorsed:] United States circuit court, western district of Louisiana. No. 110. Heirs J. C. Pickett *vs.* George Foster *et al.* Citation of appeal.

Marshal's Return.

On the 2d day of May, 1889, personally appeared P. B. Weaks, U. S. deputy marshal for the western district of Louisiana, before me, the subscriber, J. B. Beattie, clerk U. S. circuit court, fifth circuit and western district of Louisiana, and makes oath that he failed to find the within-named Mrs. Agnes M. Scanlan, who is said to reside in St. Louis, Mo., and out of his district, and that he paste a copy of this citation of appeal on the door of the Federal court-room, in the city of Shreveport, La.

P. B. WEAKS,
D'y U. S. Marshal.

Sworn to and subscribed before me this the 2d day of May, A. D. 1889.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. B. BEATTIE *Clerk.*

548 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Western District of Louisiana.

CLERK'S OFFICE.

I, J. B. Beattie, clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, do hereby certify that the foregoing 547 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Heirs J. C. Pickett *vs.* George Foster *et al.*, No. 110 of the docket of the said court.

Witness my hand and the seal of said court, at the city of Shreveport, La., this 2nd day of May, A. D. 1889.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. B. BEATTIE, *Clerk.*

I, Aleck Boarman, United States judge for the western district of Louisiana, do certify that J. B. Beattie, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, was at the time

of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of Shreveport, La., in said district, this 2nd day of May, A. D. 1889.

ALECK BOARMAN, *Judge.*

Endorsed on cover: Case No. 13,763. W. Louisiana C. C. U. S. No. 175. Joseph Desha Pickett and Theodore John Pickett, sole heirs-at-law of James C. Pickett, deceased, appellants, *vs.* George Foster and Mary J. Gwin, his wife; Augustus Ireland, Thomas Roundy, *et al.* Filed October 14, 1889.

149 U.S. 505

Office Supreme Court U. S.
FILED.
JAN 21 1893
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1892.

TERM No. 175.

JOSEPH DESHA PICKETT et al.

vs.

GEORGE FOSTER et al.

Brief for the Appellants.

Press of McGILL & WALLACE, Washington, D. C.

Supreme Court of the United States.

JOSEPH DESHA PICKETT AND THEODORE JOHN PICKETT, SOLE HEIRS-AT-LAW OF JAMES C. PICKETT, DECEASED, APPELLANTS,

vs.

GEORGE FOSTER AND MARY J. GWYN, HIS WIFE, AUGUSTUS IRELAND, THOMAS ROUNDAY, ET AL.

Appeal from the Circuit Court of the United States for Western District of Louisiana.

BRIEF FOR THE APPELLANTS.

This litigation relates to a parcel of real estate situated in the parish of Carroll and State of Louisiana, known as the Jonathan Morgan plantation, and containing about eighteen hundred acres of land.

The record title to the fee of this property is now in Mary J. Gwyn, one of the defendants, wife of George Foster, another of the defendants.

Ezra Wheeler, Thomas Rounday, and Augustus Ireland, constituting the firm of Ezra Wheeler & Co., are made defendants by reason of certain interests claimed to have been acquired by them in the property by mortgage and tax sales, with which, however, it seems that they have now parted, and which, if they exist at all,

have been transferred to the said George Foster and Mary J. Gwyn, his wife, and become merged in the superior title.

Mrs. Agnes M. Scanlan and Mrs. Narcissa J. Green are made defendants by reason of the mortgage by them given upon the property in question to Richard C. Ricketts, senior, as trustee for James C. Pickett, dated January 16, 1866, to secure the payment of $18,000 loaned by him, the said Pickett, to them at that time, and evidenced by three promissory notes dated January 1, 1866, given by them to him at that time, payable with lawful interest one, two, and three years from date respectively.

The said James C. Pickett is deceased, and the appellants, Joseph Desha Pickett and Theodore John Pickett, are the sole heirs-at-law of said James C. Pickett and the rightful owners of said notes and mortgage interest.

The action is a bill in equity brought by said heirs in the Circuit Court of the United States for the Western District of Louisiana, November 30, 1885, praying for relief against certain record clouds upon their said mortgage title, claimed to have been fraudulently procured by the defendants, and certain other fraudulent acts of the defendants, by which the rights of said heirs, as owners of said notes and mortgage, have been so far deferred and defeated, and for the establishment and enforcement of their said claim against said property; and also for the enforcement of their lien upon said property by reason of the official bond given, as public administrator, by the defendant, George Foster, and recorded May 6, 1875, in the mortgage office of the parish of Carroll, where the land in question is situated, which bond by the law of Louisiana constitutes such lien, and under which bond said heirs claim that the said George Foster, as such public administrator, has been guilty of default, laches, and fraud, by which they have hereto-

fore been delayed, defeated, and pecuniarily injured in the matter of their said notes and mortgage, and by which said George Foster has become liable to them in damages upon his said bond.

Upon the trial of their said bill in equity in the Circuit Court judgment was rendered against them, and they bring the case to this court by appeal.

The questions here arise upon the facts shown by the evidence in the Record and the legal conclusions from said facts claimed by the complainants in said Circuit Court, as appears from said Record, which said claims were overruled by said Circuit Court.

These questions are—

First. As to the validity of the original mortgage given by Mrs. Agnes M. Scanlan (then Ricketts) and Mrs. Narcissa J. Green (then Bell) to Richard C. Ricketts, trustee for James C. Pickett, a copy of which appears in the Record, pages 10 to 14.

Second. As to the invalidity of the alleged pretended proceedings, sales, and transfers of the property, by which it is claimed by the defendants that the rights of the holders of said original mortgage have been superseded. These pretended proceedings, sales, and transfers are as follows:

(*a*) The proceedings in the case of Mary J. Gwyn against George Foster in the Eighth District Court of the parish of Carroll. (Record, pages 24 to 30, and pages 32 and 33.)

(*b*) The proceedings in the cases of Ferd. M. Goodrich against Narcissa J. Morgan and Ferd. M. Goodrich against Agnes A. Morgan in the Thirteenth Judicial District Court of Louisiana in and for the parish of Carroll. (Record, pages 40 to 52.)

(*c*) The deed of sheriff to F. M. Goodrich, dated December 19, 1869. (Record, pages 53 and 54.)

(*d*) The deed from F. M. Goodrich to J. H. Green, dated May 23, 1870. (Record, pages 54 and 55.)

(*e*) The deed from Mrs. Agnes Almira Morgan to George Foster, dated February 5, 1873. (Record, pages 55 to 60.)

(*f*) Marshal's deed to Ezra Wheeler and Company, dated August 2, 1873. (Record, pages 60 to 63.)

(*g*) The tax title from R. K. Anderson to W. A. Gwyn, dated December 10, 1874. (Record, pages 63 to 66.)

(*h*) The deed from auditor to W. A. Gwyn, dated July 15, 1875. (Record, pages 66 and 67.)

(*i*) The deed from W. A. Gwyn to George Foster, dated December 16, 1881. (Record, pages 67 to 69.)

(*j*) The deed from Ezra Wheeler and Company to George Foster, dated October 24, 1881. (Record, pages 69 to 71.)

Third. As to the effect of lapse of time upon the complainants' mortgage, under the circumstances disclosed by the Record, and as regards the parties here contending.

Fourth. As to the lien upon the property in question created by the official bond of George Foster, public administrator, and the rights of the complainants as against said property and said George Foster under said bond.

The facts in the case, in brief, are as follows:

January 1, 1866, the plantation in question, or at least the undivided two-thirds interest in the same was the property of the said Mrs. Agnes M. Ricketts and Mrs. Narcissa J. Bell. On that day they borrowed $18,000 from the said James C. Pickett, and gave him the three notes in question, and on the 16th day of January, 1866, they still being the owners of said interest in said plantation, mortgaged the same to said Pickett to secure the payment of said notes by the instrument set out in the Record, pages 10 to 14.

Said deed was duly executed in the State of Tennessee, was duly accepted and recorded in the mortgage book "H," folio 352, of the recorder's office of the parish of Carroll (where said land lay) on the 12th day of March, 1866.

At that time there were no other recorded mortgages or incumbrances upon the property.

No part of said loan has ever been paid, and the debt is admitted, being now in amount about $30,000.

As soon as these notes began to mature a conspiracy began to be formed to defeat the mortgage security.

The defendant, George Foster, and one W. A. Gwyn were then partners as cotton factors and commission merchants, under the firm name of Foster & Gwyn. Mrs. Mary J. Gwyn, wife of said George Foster, is sister of said W. A. Gwyn. Mrs. Narcissa J. Bell had married J. H. Green. Ferdinand M. Goodrich, the former tutor of Mrs. Green and Mrs. Agnes A. Ricketts, was the attorney of the said firm of Foster & Gywn. Mrs. Ricketts and said J. H. Green were customers of Foster & Gwyn.

It is interesting to trace the manœuvers by which these conspirators have attempted to circumvent and defeat the rights of the complainants under the mortgage given by said Mrs. Ricketts and Mrs. Green (formerly Bell) to James C. Pickett, and by which the entire title to the whole plantation is now claimed to be in Mrs. Mary J. Foster (formerly Gwyn), wife of said George Foster and sister of said W. A. Gwyn.

In the first place the said Goodrich, who it must be remembered was the attorney of said Foster & Gwyn (see Record, p. 186, answer of witness Foster to the 5th interrogatory in his examination), instituted proceedings (evidently of a bogus character) against Mrs. Ricketts and Mrs. Bell, claiming against them balances on his account as their tutor up to the 15th day of March, 1862. These

proceedings were instituted in the 13th Judicial District Court of Louisiana in and for the parish of Carroll, and culminated in pretended though void judgments of the said court by consent of the defendants in each case, and recognizing a lien upon the interests of the said Mrs. Rickitts and Mrs. Bell in the property in question for the balances claimed to be due from them respectively to said Goodrich, said lien dating from the 3d day of December, 1855. Executions were then taken out by said Goodrich upon said pretended judgments and levied upon said property, and the property being sold by the sheriff upon said executions was purchased, Mrs. Green's portion of the property by her husband, J. H. Green, for the sum of $1,156.64, and Mrs. Ricketts' portion by the said Goodrich himself for the sum of $1,734.

Thereupon the said Goodrich, on the 18th day of December, 1868, deeds the portion thus purchased by him to Mrs. Ricketts unconditionally, simply taking her notes for the sum of $4,000 as the consideration thereof.

Then on the demand of said Goodrich (who was attorney for Foster & Gwyn), the deputy recorder of the land mortages of the county of Carroll indorsed upon the face of the record of the mortgage deed from Mrs. Ricketts and Mrs. Bell to James C. Pickett the following:

"*Erased in full evidence the return of the sheriff in the suit of Ferd. M. Goodrich, tutor, against Agnes M. Ricketts and Narcissa J. Bell, on file in the office of the clerk of the District Court, and the demand of Ferd. M. Goodrich that the mortgage be erased. Floyd, La., December 19th, 1868.* (See Record, pages 208, 209.) *A. G. Beldon, dy. Recorder.*"

Then Mrs. Ricketts (Scanlan) mortgaged her interest in the property to said Foster & Gwyn for the sum of $19,000 on the 23d day of May, 1870.

See Record, pp. 209 to 211.

Then on the same day John H. Green (the husband of Mrs. Narcissa J. Green, formerly Bell) mortgaged her

share of the property to said Foster & Gwyn for ten thousand dollars.

See Record, pp. 211 and 212.

This mortgage from Green to Foster & Gwyn was by them transferred to Ezra Wheeler & Co., and finally, the property having been sold by the marshal upon legal proceeding instituted by said Ezra Wheeler & Co. upon said mortgage indebtedness, and upon such sale having been purchased by said Ezra Wheeler & Co., they in turn conveyed it back to said George Foster, October 24th, 1881.

Record, pp. 69 to 71.

On February 5th, 1873, Mrs. Scanlan conveyed all her interest in the property to said Foster.

Record, pp. 55 to 60.

December 10th, 1874, said Foster procured the sale of the property to his brother-in-law, Gwyn, for his own taxes and the taxes of J. H. Green, and said Gwyn afterward conveyed it back to said George Foster, December 16th, 1881.

This is claimed by Foster to have been a mere contrivance to satisfy the firm of Gwyn & Dyer, to whom he says he was indebted, and who, he says, agreed to convey the property back to him when he had paid them.

On the 23d of December, 1873, B. H. Lanier, then public administrator, brought suit to foreclose said mortgage given to James C. Pickett in behalf of his succession, he having deceased and having no other representative in that jurisdiction.

To this suit said George Foster, being in possession of said plantation and claiming an interest therein, was made one of the parties defendant. (See Record, pages 14 to 19.)

Thereupon said George Foster applies for and obtains the appointment of public administrator in place of B. H. Lanier, and having obtained that office, and having thus been placed officially in charge of said suit in behalf of the succession of James C. Pickett, he himself being in his private capacity a defendant in said suit, he has the case called in court and non-suited without notifying the heirs of said Pickett, or taking any step whatever to protect their interests or otherwise to discharge the obligations of his office as public administrator.

See Record, pages 19 to 23.

The final step in the scheme of fraud was the institution of a suit in the name of the wife of George Foster by which she obtained judgment against him, had execution levied upon the said plantation to satisfy the said judgment, and bought it in at the sheriff's sale for a nominal sum.

See Record, pages 27 to 30.

The pretense now is that the said Mary J. Gwyn, wife of George Foster, is a *bona fide* owner of this property against the heirs of James C. Pickett, though it appears from the evidence that George Foster himself has been during all these proceedings for at least 12 years prior to 1887, the date of the taking of the depositions, in the possession and enjoyment of the same.

Obviously this transfer from George Foster to his wife is a mere subterfuge. Obviously, George Foster himself must be treated as the real defendant in interest in these proceedings, and the question submitted to this court is whether equity is powerless to protect innocent parties loaning money and taking mortgage security on real estate in Louisiana, intended to be valid and valid in reality at least, as between the parties to the mortgage, against the person who, as public administrator, charged with the duty of foreclosing that mortgage, betrayed that

trust, procured the foreclosure to be non-suited, and by various transparently fraudulent shifts, having gathered the whole title to the property except said mortgage into his own hands, is now attempting to take advantage of his own wrong under the guise of a *bona fide* purchaser.

A more particular and complete statement of the facts in the case is as follows:

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et al.*

Statement of Facts.

The notes declared upon were executed on the 1st of January, 1866. The act of mortgage was executed in Tennessee on the 16th of January, 1866, and was accepted by J. C. Pickett in Washington on the 10th February, 1866.

The mortgage was duly recorded in Carroll Parish, after being proved up by the makers, on the 6th of March, 1866.

The suit to foreclose the mortgage and collect the notes was filed in Carroll on the 23d December, 1873; citations on Mrs. Green and Mrs. Scanlan were served on the 27th December, 1873; citations were served on Pilcher, curator *ad hoc* for Wheeler & Co., on the 23d December, 1873, and on Foster on 30th December, 1873. This suit was brought in the name of Lanier, public administrator for Carroll Parish.

On the 2d June, 1874, defendants filed an exception of no cause of action because Lanier did not give bond and take the oath of office, and because no such succession was legally opened in that parish.

On 12th June the case was continued. On the 28th of April, 1875, George Foster was commissioned as public administrator for Carroll Parish; on the 29th of April, 1875, he gave bond and took the oath of office.

On the 6th of May, 1875, this bond was duly recorded in Carroll.

On the 29th of November, 1875, motion was made by defendants' counsel to call B. H. Lanier, public administrator, and George Foster, public administrator, to prosecute this suit; and failing to do so it was ordered that suit be dismissed. Judgment was signed on 4th December, 1875.

The exception had never been fixed for trial; and Montgomery, the attorney for Lanier, public administrator, testifies he did not know anything about this proceeding till after the dismissal of the suit.

Petition of Goodrich, tutor, *vs.* N. J. Bell (Morgan) was filed on the 25th day of January, 1867.

The emancipated minor confessed judgment on the petition on the 11th day of January, before the petition was filed, and on the 26th of January, 1867, the judgment was signed, in chambers, by the clerk of the court, without any advertisement or the rendition of any account.

In this judgment (?) the legal mortgage of the tutor for advances is recognized for $903.77, to date from 3d December, 1855, and this, too, when the petition of Goodrich shows that by his previous account rendered on 20th April, 1859, he owed the minors $1,263.21.

A similar petition, confession, and judgment was rendered in the matter of Goodrich, tutor, *vs.* A. A. Ricketts with this difference, that the judgment against Mrs. Ricketts was for $3,498.71.

These amounts are said to be for advances between April, 1859, and March, 1862.

The plantation of these minors yielded large revenues and were controlled by F. M. Goodrich in 1859, 1860, and 1861. How could these school girls have expended, not only the revenues of these places, but the $1,263.21 due them by their tutor in March, 1859?

Goodrich was the attorney of Foster (see Foster's testimony). Mrs. Scanlan and Mrs. Green (N. J. Morgan and A. A. Ricketts) commenced doing business with the house of Foster, Gwyn & Company in 1868.

On the 5th of September, 1868, under the execution in case of Goodrich, tutor, *v.* N. J. Morgan or Green, her husband, J. H. Green, became the purchaser for $1,156.64.

The return on the writ shows that notice of seizure was waived, and it does not show how the bid was paid.

Under his execution in the case against A. A. Ricketts, on the same day of the sale above mentioned, 5th September, 1868, F. M. Goodrich became the purchaser of the other half of said plantation for $1,734, and he retained the price bid less $37.73 costs paid to the sheriff.

This magnificent plantation, containing upwards of 1800 acres, on the Mississippi, with magnificent and costly buildings and other improvements, which, in January, 1866, was mortgaged for $18,000, and which rented for at least ten dollars per acre at that time, was sold for this paltry sum to the affianced husband of one of these ladies and to the relative and former tutor of the ladies.

On the 18th December, 1868, Goodrich sold, without warranty, a quit claim to Mrs. Ricketts for $4,000, payable in four installments on time.

On the 5th of February, 1873, Foster acquired by private sale from Mrs. Scanlan her half of the plantation for $36,934.94. Sale from Packard Marshall, in suit of Ezra Wheeler & Co. *v.* J. H. Green, dated 2d August, 1873, for $10,074.55, debt due by J. H. Green.

On the 28th November, 1874, for taxes ($318.37) due by George Foster himself, this property was sold to Gwyn, the brother-in-law and at one time partner of George Foster, nominally for $1,500.

J. H. Green's portion sold for his taxes ($483.77) to Gwyn for $1,001—nominally, for taxes of 1873.

On 16th December, 1881, Gywn sold to Foster the above plantation for $5,000.

Suit for separation of property between George Foster and his wife, filed 5th December, 1881; judgment rendered 6th July, 1882, for $2,986.

Under this judgment she bought the plantations, nominally for $10,306.78, on the 8th July, 1884, the amount of the alleged mortgages on the place. She paid the sheriff only the costs, retaining the balance to pay mortgages.

This suit in equity was filed on 30th November, 1885, and citations were served on Foster and his wife on the 4th December, 1885.

Mrs. Scanlon and Mrs. Green live out of this State, but they filed their answers on 12th April, 1886, admitting that they owed the notes and executed the mortgages, etc.

HEIRS OF J. C. PICKETT
vs.
GEORGE FOSTER *et al.*

Law of the Case.

I. Had Pickett a mortgage on the Jonathan Morgan, or Pecan Grove, plantation, from the 12th of March, 1866, when the act from Mrs. Green and Mrs. Scanlan to J. C. Pickett was recorded in Carroll Parish? Yes.

"The effect of a deed of trust, or common-law mortgage, in countries governed by the common law, is to establish a lien. Under our law it can confer no higher right than that of a mortgage," but it does confer that right. (38 An., 890; 15 An., 386; 6 An., 18; 4 An., 16; 4 An., 65; Hagden *v.* Nutt, 5 Reb., 49; 1 N. S., 524; 4 La., 64; 96 U. S. Rep., 336; Peugh *v.* Davis.)

The decision in 34 An., cited by council for defendant, was an act passed in Louisiana, and the court seems to have permitted that fact to influence them. But in 38

An., 890, the same court reiterated the settled jurisprudence announced in 1 N. S. to 34 An.

It is certain that anterior to the decision in 34 An. the jurisprudence of this State had settled the question that a common-law mortgage or deed of trust would be enforced as a mortgage in this State. In 1 N. S. and 4 La. the court said such an act came within the exact definition of a mortgage as defined in the civil code. "A conventional mortgage is a contract by which a person binds the whole of his property, or a portion of it only, in favor of another to secure the execution of some engagement, but without divesting himself of the possession." (C. C., act 3290.)

Of course the jurisprudence of Louisiana in 1866 would control the rights of parties under the act in question, if there were any question as to what the jurisprudence was at a later date.

II. Did the sales under Goodrich's judgments against Mrs. Green and Mrs. Scanlan extinguish Pickett's mortgage? No.

Those judgments (so-called) were mere nullities. The clerk of the court never possessed the power to render such a judgment, rendering a money judgment by confession.

The clerk, under the acts of 1855, could only homologate accounts of tutors which have been filed and advertised according to law, and which have not been opposed. And he could only homologate such accounts on the first Saturday of each month. (Acts of 1855, page 50, No. 56.)

There never was any account filed. In the confession of defendants they waive it. Consequently it was not advertised 30 days, according to law, and it was rendered on the 26th day of January, 1867, only one day after the petition was filed.

The 26th of January was certainly not the first Saturday of January.

Yet these are jurisdictional facts upon which the power of the clerk to act in the matter depended absolutely under the law.

It has been repeatedly held by the Circuit Court of this State that a judgment rendered on a waiver of citation and confession of judgment *prior to the filing of a petition or suit without a citation* is an absolute nullity for want of a citation.

A *fortiori*, a judgment rendered by a clerk where the facts, which alone could give the clerk jurisdiction under the law, have been waived, is a nullity. It has often been decided that consent can not give jurisdiction. It is not necessary to cite the authorities to your honors.

Jurisdiction in judicial proceedings is conferred by law alone. The law which empowered the clerks of courts to homologate "accounts of tutors," etc., declared in plain and emphatic terms when such power could be exercised, to wit, when the account had been filed in the clerk's office and advertised in a newspaper 30 days, and when there has been no opposition filed thereto, and then only on the first Saturday of each month. (See Revised Statutes of 1855, p. 50.)

In 16 An., p. 304, the court held that no account can be homologated by the clerk until it shall have been advertised according to law 30 days. (Succession of Joel Foster.)

Counsel for defendant said in argument on the trial "there was no necessity for any publication or advertisement of the account;" that the heirs had waived the advertising, etc. The answer to this is, then the clerk had no power to act under the law, for it is only after the filing of an account by a tutor, etc., and the required advertisement, that the clerk can act. The law may be wrong—but "*ita scripta lex.*"

But the whole proceeding was a consent matter, and the Supreme Court of this State has repeatedly held that "connsent decrees decide nothing—they merely authenticate private agreements, rendering them executory between the parties. Their effect as to third persons is that of a private transaction in authentic form." (3 An., 34; 6 An., 2.)

The consent decree (?) declaring that Goodrich had a legal mortgage to date from 1855, therefore had no effect as to third persons, nor had the sales under said alleged judgments.

So far as third persons (J. C. Pickett among others) are concerned, whether Goodrich had a legal mortgage or not, depended upon the fact of the minors (while under his guardianship) being indebted to him as tutor for advances made for them, and not upon any agreement of consent or consent decree.

And he who affirms that Goodrich had such a mortgage and claims any right resulting from it must prove the fact. That is the third of the four general rules of evidence—that is, "that the burden of proof is on the party who holds the affirmative."

And in the case of Choetian *v.* Richardson (6 An., p. 6) the court, commenting on dissolution of a sale for nonpayment of a price by a consent decree, say:

"The appellee's counsel contend that the necessity can only be judicially established by a decree of a competent court dissolving the sale. So far from acceding to this proposition, we are of opinion that such a decree would in no case be conclusive evidence of the necessity, and that third persons having an interest to do so might controvert it and show that it was not collusive, and that no necessity existed for the resolution of the contract. When the suit has been contested the decree dissolving the sale is *prima facie* evidence that it was dissolved *ex causa necessaria*, and third persons who seek to avoid its effect must prove the fraud or collusion. When, on the other

hand, the contract has been rescinded extra judicially, or by a consent decree, the onus of proving the necessity devolves upon the party who claims the benefit of the resolution."

Applying the principles or rules above recognized to this case, it must be held that it was incumbent on the defendants, who claim that Goodrich had a legal mortgage on the Pecan Grove plantation, to prove the fact, outside of the minors' confessions or the consent decree, by legal evidence. This has not even been attempted.

From Goodrich's allegations in his petition he had no mortgage against Narcissa and Agnes Morgan in 1859, when he rendered his account, for he was then indebted to them. The heirs were both emancipated and married, and took possession of their property before March, 1862, as appears from Goodrich's petition, yet he did not then set up any claim against them, nor at any time subsequently, till the 26th of January, 1867, a few days after the maturity of the first of the mortgage notes given to J. C. Pickett.

There is nothing in the petition, nor elsewhere in the Record, to show when any of the advances were made to the heirs, nor how. In March, 1859, Goodrich says he owed these heirs over $1,200. He must have controlled the crops of said plantation for the years 1859, 1860, and 1861 if he was their tutor. The court will take judicial cognizance of the fact that the planting interests in the State of Louisiana, in Carroll Parish, were not interrupted by the war during these years. Can your Honors believe that he expended the proceeds of the crops made on that plantation during these years for the benefit of these school girls or young ladies besides the sum he admits he owed them in 1859?

Goodrich says in his petition "every dollar" advanced to them passed through the hands of "Pilcher & Good-

rich," and that his account is shown by abstracts from their books. He does not state for what years. It is more than probable that the indebtedness of Mrs. Scanlan and Mrs. Green, if there was any, was to "Pilcher & Goodrich," commission merchants, and after their emancipation and marriage. Be that as it may, there is no proof that Goodrich was ever tutor to the minors or that they were in his debt for advances. What he alleges in his petition, or what Mrs. Green or Mrs. Scanlan admit or confess, is not evidence against the heirs of J. C. Pickett or other third persons.

That our mortage was the first and only mortgage bearing on the property in controversy on the 12th of March, 1866, when it was recorded, is a fact that can not successfully be denied. There was absolutely then no other mortgage on the property.

That judgment of Goodrich signed by the clerk in 1867 has never been recorded in the mortgage books. Now all mortgages have to be recorded to have effect against third persons.

Under the constitution of 1868 and the laws carrying it into effect all existing tacit mortgages, as well as other mortgages, were required to be inscribed in the mortgage office, and if not recorded they ceased to have effect.

But a tutor under our law never had a tacit mortgage.

Under the civil law a person *sui juris* does not have a tacit mortgage. A tacit mortgage, or a mortgage without registry, can only have effect in favor of persons *alieni juris*, such as married women and minors.

A tutor has a legal mortgage, but it is without effect without registry. He is *sui juris* and has the ability to cause the registry of his legal mortgage. If he fails to do so, as was the case with Goodrich (assuming that he was tutor) it is his own fault. This was the law in force prior to the constitution of 1868, and the decisions settle the question beyond dispute.

"The mortgage granted by article 3282 of the civil code in favor of tutors on the property of minors as a security for the advances they may have made, and which is herein delared to be like the mortgage in favor of minors, should be recorded to have force and effect even before the constitution of 1868." (22 A., 390; 20 A., 509; 24 A., 79.)

Hence we conclude that this pretended claim of Goodrich never was a mortgage bearing on the property in question; that pretended claim never operated as a mortgage because it never was recorded.

If the position we have taken be true, and it is undoubtedly true, how has our first mortgage ever been shaken off of the property in controversy? How has it ceased to encumber that property? As we have shown, the mortgage has not pre-empted, at least as against George Foster. We answer the question by saying, the mortgage has never ceased to bind that property and it encumbers it to-day.

A junior mortgage creditor may sell the property upon which a prior mortgage exists, but at the forced sale the bid and price of adjudication must exceed the amount of the prior mortgage. How was it possible for Goodrich in his own behalf and our mortgage debtors (Mrs. Scanlan and Mrs. Green) to put their heads together, get up any device,document, proceeding or decree, in 1867, to which we were not party, whereby our mortgage could be ousted or legally divested? Let us assume that Mrs. Scanlan and Mrs Green in 1867 owed Goodrich a debt on account of the tutorship, as is pretended; that debt, as we have shown, had no bearing as a mortgage superior to ours, and it was not in their power by any proceeding or device whatsoever to give that alleged claim a rank superior to our mortgage. The court will bear in mind that, so far as we are concerned, the tutorship has ended long before our mortgage rights had accrued.

The property had passed out of the tutorship. It, as well as the succession of Jonathan Morgan, had terminated. The property had passed into the hands of Widow Ricketts and Widow Bell (Mrs. Scanlan and Mrs. Green, formerly Agnes and Narcissa Morgan). When these heirs became of age and went into possession of their property as owners, it passed beyond the jurisdiction of the Probate Court; it became subject to the contracts, debts, and mortgages of its owners, and the creditors of those owners acquired the right to enforce their claims against them and their property in a court of general jurisdiction, a court of law or equity, as the case might be. After having mortgaged this property, January 16, 1866, to us to obtain a loan of about $18,000 with which to improve and operate the plantation then in their possession as owners, how was it possible for Mrs. Scanlan and Mrs. Green, widows long past the age of majority, to confederate with Goodrich, their alleged tutor, while they were minors, and get up a proceeding and judgment (to which we were not parties) and by a sale thereunder oust or destroy our mortgage?

How could they, after taking the property out of the tutorship and out of the jurisdiction of the Probate Court for years, make any contract or do anything whereby that property, to our prejudice, should be brought back to a tutorship already ended, brought back to the jurisdiction of the Probate Court out of which it had passed many years before, for Mrs. Scanlan and Mrs. Green were then Widows Ricketts and Bell, and had for more than ten years been in possession administering the plantation as owners?

In 1867, when Goodrich in his own behalf and Widow Ricketts and Widow Bell put their heads together and got up a consent judgment signed by the clerk in liquidation of the pretended claim of Goodrich, they issued a *fi. fa.* under which the property in controversy was

sold. Widow Ricketts' part of the plantation was adjudicated to F. M. Goodrich, September 5, 1868, for $1,734.00, and Widow Bell's part was adjudicated to John H. Green (whom she afterwards married) for the same price, $1,734.00, on the same day, September 5, 1868. As these two widows had then been in possession as owners for over ten years, of course the plantation had passed out of possession of the tutor; the Probate Court no longer held jurisdiction of the property, for the heirs were of age and in possession as owners; two years before that time they exercised their rights as owners by mortgaging it to J. C. Pickett to obtain $18,000.

The Probate Court (and the clerk had only certain limited probate powers which will be noticed hereafter) had jurisdiction neither of the persons nor the subject-matter when the pretended judgment was signed by the clerk on the 25th day of January, 1867. If Widow Ricketts and Widow Bell had then been owing Goodrich for any money advanced to them during minority, he should have sued them in a court of ordinary jurisdiction, obtained judgment, recorded it, and then issued a *fi. fa.* under which the property in question could have been seized, but before adjudication the purchaser would have to bid a sum exceeding the amount of our conventional mortgage, the first mortgage bearing on the property.

The Probate Court had no jurisdiction of the persons because Widow Ricketts and Widow Bell were persons *sui juris* long past the age of majority; it had no possession of the property or jurisdiction of the subject-matter, for Goodrich, the alleged tutor, had no possession. If Goodrich had been tutor, both the minors and their property were in his possession and under jurisdiction of the Probate Court during minority, but when they became of age and were put in possession of their property, Goodrich lost possession, and the Probate Court lost jurisdiction of the persons and the subject-matter.

If, in 1868, the Probate Court had jurisdiction and the tutorship was still pending, the tutor being in possession of the property, all the Probate Court could do would be to homologate the account of the tutor, and then the tutor, if desiring to sell the property of the minors, could apply to the court to convene a family meeting, etc., and then order him to sell the property to pay debts, if the family meeting should so advise, etc. The tutor could not obtain such a judgment from the clerk of the court as would authorize a *fi. fa.* to be issued and a sale to be made by the sheriff, as was attempted to be done in the sales to Goodrich and Green on the 5th of September, 1868. We acknowledge that the law is well settled that in succession sales the purchaser is not bound to look beyond the order of sale, where the court has jurisdiction of the subject-matter or possession of the property ordered to be sold, the possession of the administrator being the possession of the court. But this rule has no application to a tutorship. The property of minors can not be validly sold without the advice of a family meeting, the approval of the under tutor, and the order of the judge homologating the proceedings of the family meeting. After that the judge may order the sale to be made by the tutor of certain property belonging to the tutorship in pursuance of the recommendation and terms advised by the family meeting. The judge himself could not give a decree in a tutorship upon which a *fi. fa.* could be issued; how could the clerk enter such a judgment? A *fi. fa.* is the method of executing a judgment of a court of ordinary jurisdiction. It is a writ to enforce an action for debt, and the debtor has the right to point out property—any property in his possession—to be sold to satisfy the writ. The very fact that a *fi. fa.* was issued against Widow Ricketts and Widow Bell, under which their property, the plantation in question, was seized and sold by Geo. A. Sheridan, sheriff, September 5, 1868, con-

tradictorily with them, shows conclusively that these widows were in possession of the property as owners; that it was not in possession of the tutorship, and therefore the Probate Court had no jurisdiction of the subject-matter. If the Probate Court had no jurisdiction of the thing or subject-matter, the clerk of the court could make no order of sale whatsoever. In Probate sales the judge orders the sale of property in possession or jurisdiction of the court, but a judgment upon which a *fi. fa.* can be issued must be rendered in a law case or bill in equity. Such a case can not be tried in a Probate Court.

The only ground upon which a sale can be made in the Probate Court is for the purpose of raising or providing funds to be distributed in payment of debts and settlement of the account and tableau.

But there must be an order of sale directing certain property of the succession to be sold. In probate matters an order of sale of the property of the succession is absolutely essential. To this order of sale the bidder must look to find authority for the sale. If there is no order of sale the purchaser acquires no title. Now, if a succession owes debts the tutor may proceed to pay those debts and settle up the succession, filling the office of administrator. But that was not the case here. There is not a particle of proof that the succession of Jonathan Morgan ever owed any debts. On the contrary, the judicial admissions of Goodrich, in the suits filed by him January 25, 1867, against Mrs. Ricketts and Mrs. Bell, upon which the clerk entered up and signed judgments upon the same day, show that on the 20th of April, 1859, he owed the then minors, Agnes A. and Narcissa J. Morgan, $1,263.21; that prior to March 15, 1862, they had been in "possession of their property, rights, and credits, real and personal, etc." We take these judicial admissions as true. They can not be denied, for they are positive allegations in the petitions of Goodrich upon which

the clerk entered judgments January 25, 1867, on which *fi. fas.* were issued and the property in controversy sold September 5, 1868.

But there was no order of sale granted by the Probate Court directing the sale of this property. When George A. Sheridan, sheriff, adjudicated Widow Ricketts' part of the property to F. M. Goodrich, and Widow Bell's part of the property to John H. Green, on September 5, 1868, there was absolutely no order of sale granted either in the succession of Jonathan Morgan or in the tutorship of Agnes A. and Narcissa J. Morgan (then Mrs. Ricketts and Mrs. Bell).

If we regard the sale as probate in its character, was it not the duty of the purchasers to look to the order of sale, to examine minutely to ascertain whether the Probate Court had granted a specific order requiring the property in question to be sold?

The Record in this case will be searched in vain to find any order of court sitting in probate directing the sale of the Jonathan Morgan plantation. Furthermore there was no petition or application filed by the tutor or by the creditors asking that the property of the tutorship be sold to pay debts. Now is it not absurd for our opponents to argue that the adjudications of September 5, 1868, to F. M. Goodrich and John H. Green were valid sales; that they ousted our prior mortgage, because they were probate sales, succession sales, or tutorship sales, and the specific order of the Probate Court having possession of the plantation, or jurisdiction of the subject-matter, directed the sale of that property and that said adjudicates are protected by that order? Now where is the order of sale to be found? It is not in the Record. There never was an order of sale in the tutorship of Agnes A. and Narcissa J. Morgan (now Mrs. Scanlan and Mrs. Green). If there was no order of sale either in the succession of Jonathan Morgan, or in the

tutorship aforesaid, then it is wholly unnecessary to argue this point any further. There is no more familiar application of the rule than that a purchaser at succession sale need not look beyond the order of sale or the order of the probate judge directing the sale of certain specific property in the custody and jurisdiction of the court, the possession of the administrator being the possession of the court.

The adjudications of the 5th of September, 1868, to F. M. Goodrich and John H. Green were absolute nullities, because they were not based upon any valid decree or judgment. As we have shown there was no specific order of sale in the tutorship aforesaid, for the Probate Court never ordered the property in controversy to be sold. It is marvelous to contemplate the egregious errors committed by F. M. Goodrich in his own behalf, and our debtors, Widow Ricketts and Widow Bell, when they undertook proceedings to get the property in controversy sold in 1868 for the manifest purpose of ousting our mortgage if possible and defrauding J. C. Pickett. What did they do, or attempt to do, to accomplish the defeat of our mortgage, if possible?

On the 25th of January, 1867, F. M. Goodrich presented two petitions to the court alleging that on April 20, 1859, he filed a provisional account of the tutorship which showed his indebtedness of $1,263.21 to the minors; that between that time and the 15th of March, 1862, they had become indebted to him as tutor in the amounts stated in his petition; that "prior to the said 15th of March, 1862, said minors became emancipated and had taken possession of their property, rights and credits, real and personal, etc.," ———; that he presents an account and vouchers showing the indebtedness alleged by him, about $4,000 in the aggregate. And the prayer of the petition is:

"That the said Agnes A. Morgan, now Mrs. Agnes A. Ricketts, and the said Narcissa J. Morgan, now Mrs. Narcissa J. Bell, may be served with a copy hereof as well as the accounts marked 'A' and 'B,' and after due and legal notice that said account be homologated and a judgment rendered in favor of your petitioner decreeing the balance due in favor of your petitioner of $——— with legal interest from the 15th of March, 1862, and that he be discharged from all further responsibility and liability as tutor aforesaid, his bond cancelled and his securities relieved from all indebtedness and liability thereon, and as in duty bound will ever pray.

"FERD. M. GOODRICH,
"*Tutor, etc.*"

By way of parenthesis, we remark that the prayer of the petition which we have quoted does not ask for an order of sale of the property in question, and the allegations of the petition do not allege or claim a tacit mortgage in behalf of Goodrich, tutor.

No account was ever filed, for the indebtedness was a fiction. No notice of the filing of an account was ever published. No order of court was ever rendered stating that such an account had been filed and ordering a notice of the filing thereof to be published. As a substitute for all this, the following confession of judgment was signed by Mrs. A. M. Ricketts, and a similar one signed by Mrs. Narcissa J. Bell, to wit:

"I hereby waive service of the foregoing petition, copies of accounts, vouchers, citations, etc., and having examined the before-mentioned accounts and found them to be correct, acknowledge my indebtedness to petitioner as set forth, viz., $3,498.71, and do further acknowledge this to be a full, complete, and final settlement for all liability of petitioner as tutor aforesaid, and concur fully in the prayer of his petition.

"Done this the 11th of January, 1867.

"A. M. RICKETTS."

This confession of judgment was signed on the 11th of January, and the petition was filed on the 25th of January, 1867. On the same day, to wit, January 25, 1867, the following judgment was written up and signed by the clerk, to wit:

"F. M. GOODRICH, tutor, } State of Louisiana,
vs. } Parish of Carroll,
"AGNES A. RICKETTS. } Thirteenth District Court.

"By reason of the law and evidence and the written release and acquittance and acknowledgment of indebtedness all hereto annexed, it is therefore ordered, adjudged, and decreed that the annexed final account and settlement of Ferd. M. Goodrich, tutor for Agnes A. Morgan (now Ricketts), be, and the same is hereby, approved and homologated, and said tutor finally and fully discharged from said trust, and his bond as tutor cancelled. It is further ordered, adjudged, and decreed that Ferd. M. Goodrich have and recover of the said Agnes A. Ricketts the sum of thirty-four hundred and ninety 71-100 dollars, with legal interest thereon from the 15th day of March, 1862, the amount acknowledged to be due by her, and that the legal or tacit mortgage in favor of said tutor be recognized to date from the 3d of December, 1855.

"Done and signed at Floyd, Carroll Parish, Louisiana, this the 25th day of January, A. D. 1867.

"I. L. CHEATHAM,
"*Clerk District Court.*"

A similar confession of judgment was signed by Widow Bell and a similar judgment therein was written up and signed by the clerk on January 26, 1867.

Now it is manifest that these pretended money-judgments signed by the clerk while the court was not in session are mere nullities. Court was not in session and there was no trial whatever. The judgment against Widow Ricketts was written up and signed by the clerk on the same day the petition was filed; and the judgment against Widow Bell was written up and signed by the clerk on the next day after the petition was filed.

As a probate proceeding this pretended decree is void upon its face, for no notice had been published for 30 days; no order of court had been granted directing the publication of notice. Furthermore this pretended decree merely gives a money-judgment; it does not contain an order for the sale of the property in question. Hence said pretended decree can not be regarded as the judgment of a Probate Court; and the fact that Goodrich, the judgment creditor, required a *fi. fa.* to be issued against his judgment debtor shows conclusively that he understood said decree to be only a confession of judgment. Now as a judgment of the District Court said pretended decree is a farce. It is an absolute nullity. The general assembly never enacted a law authorizing a clerk to try a case and write up and sign a money-judgment, or any judgment upon which a *fi. fa.* could be issued; if it had done so, the law would be unconstitutional and void. A judgment upon which a *fi. fa.* may issue is a judicial act "which can be exercised by the judge only" (34 A., 1027). The clerk of the District Court has only certain limited probate power as conferred by a statute, viz.:

"Clerks of the District Court shall have power * * * to order family meetings and homologate their proceedings if no opposition is made thereto; to grant orders for the sale of succession property; * * * to issue orders for the advertisement of the filing of accounts, and the tableaux of tutors, administrators, curators of vacant estates and absent heirs, * * * and to homologate the same so far as not opposed. * * *

"The first Saturday in every month shall be fixed as the only day on which the clerks shall have the right to homologate accounts and tableaux of distribution; and no account or tableaux shall be approved or homologated until the heirs who reside in the parish in which the court having jurisdiction of the matter is held, and the legal delay for considering or opposing such accounts shall have elapsed. No accounts shall be homologated by the clerk until it shall have been notified at least thirty days in the manner required by law.

"Whenever opposition is made to any account, it shall be referred for decision to the court, and all further proceedings therein by the court shall be suspended."

See acts 1855, No. 56, p. 50.

As there was no order for the advertisement of the filing of an account by Goodrich, and as there was no notice of 30 days published, it is manifest that these pretended decrees signed by the clerk (one on the same day the petition was filed, and the other on the next day thereafter) are mere *ex parte* orders which the clerk had no authority to grant. The error was patent on the face of the papers. No waiver by the heirs could dispense with the necessity for the granting of the order for the advertisement of notice, and no waiver by the heirs could dispense with the 30 days' notice to be published by the clerk before homologating an account. Furthermore, assuming that the proceeding was a probate matter, the clerk by express law could only homologate accounts on the first Saturday of each month. Here, on their face, these two pretended judgments were signed, one on the 25th and the other on the 26th of January, 1867—near the end of the month—long after the first Saturday.

But, as before remarked, these pretended decrees are of no value as a probate proceeding, for they do not contain a specific order directing the sale of the Jonathan Morgan plantation. The purchasers, Goodrich and Green, in the pretended adjudication of September 5, 1868, are charged with notice that there was no order of court in the succession of Jonathan Morgan, or in the tutorship aforesaid, directing the sale of the property in question.

If, however, the sale in question be regarded as made under probate authority, F. M. Goodrich, the pretended tutor, could not buy the property of the tutorship at a sale provoked by him to pay a pretended claim due to him by said tutorship. No tutor can sell out minors' property, or the property of a tutorship, and become the

purchaser thereof without the advice of a family meeting or otherwise with a view to obtain funds to pay himself for advances to the minors.

The truth is the pretended claim of Goodrich is a myth and the pretended judgment, *fi. fa.*, and sale were the result of a combination between Goodrich and our debtors (Widow Ricketts and Widow Bell) gotten up to defraud J. C. Pickett. There was no fair, open sale and no change of possession resulting from the pretended adjudication. It is marvelous that for the same price, $1,734, Goodrich was the adjudicatee of Widow Ricketts' half, while John H. Green (who afterwards married Widow Bell) acquired her half; and in a few days after Goodrich bought he sells out to Widow Ricketts. The sole object of these proceedings was to swindle J. C. Pickett, these two widows to retain the property, and Goodrich to make out of the transaction about $8,000 as his share of the spoils, same being his reward for putting up the job of spoliation and fraud.

I have dwelt upon these facts to call the attention of the court to the first step in the scheme of fraud concocted between Goodrich and others to defraud J. C. Pickett or his heirs of their mortgage rights. The subsequent steps or acts will successively suggest themselves to your Honors when you read the Record, to wit, the sales under Goodrich's judgment (?) recognizing a legal mortgage from 1855. It had to antedate Pickett's mortgage to be of any service! The sale to himself and the other to the husband, or affianced husband, of one of the ladies for the insignificant prices stated; Goodrich's sale immediately afterward to one of his alleged debtors, on time, for an insignificant price, and his sale without warranty, a mere quit claim. The judgments (?) were obtained on 26th January, 1867, twenty-six days after the maturity of the first of Pickett's notes. The sales were not made till September, 1868.

These ladies commenced to do business with Foster, Gwyn & Co. in 1868. And F. M. Goodrich was the attorney of George Foster! (See Foster's testimony.) At the end of that year, it is fair to presume from the evidence given by himself, these ladies were indebted to him, and it became necessary to prepare to get security from them. Their plantation would be security if unencumbered; but upon the records of the parish stood a mortgage for $18,000, with interest, against that plantation in favor of J. C. Pickett. How to get rid of that was the question. And Goodrich undertook to solve it by selling the property under his legal mortgage antedating Pickett's! Why else was the recognition of his mortgage necessary to secure payment of his debts—when it appears from the Record the husband of one of these ladies, and the other lady herself, in fact, did pay—if the whole thing was not a sham?

Mr. George Foster testified that his firm commenced doing business with these ladies in 1868, and that at that time "F. M. Goodrich was employed as our attorney." (Answer to 5th intg.) Why? The sales under Goodrich's pretended judgments were subsequent to this. The erasure of the mortgage, etc., of course, were subsequent. Why erase the mortgage of Pickett if the legal mortgage antedated it again? Whether or not Foster was a party to this fraud is a matter of inference, and it is not important, as Pickett's mortgage was recorded and everybody was bound to take notice of the fact. But his attorney was a party; and the only persons who are seeking to derive any advantage from that fraud are the defendants. The subsequent acts of Foster would go to show that he was a party to the fraud from the commencement. He consulted counsel as to the effect of that deed of trust, and by various shifts attempted to put it out of his way.

In the oral argument counsel for defendant urged that plaintiffs had not alleged that the judgment and sales under the judgment, in favor of Goodrich, were fraudulent. We allege that they were nullities and "pretended" judgments, etc., and did not affect our mortgage. But if we had not referred to them in the bill these judgments and sales are set up in the answer as muniments of titles; and as special replications are not allowed under the general replication (in the State Court without any replication) plaintiffs can prove anything which goes to destroy their effect as muniments of titles or their validity.

During the argument below I was asked what effect the sales under Goodrich's judgments would have as to the rights of plaintiffs if the clerk of the court who rendered them had jurisdiction?

I answered then, and I repeat the answer after mature consideration and examination, none whatever.

They were consent-decrees which could affect no one but the parties to the agreement.

The principle is enunciated in 6 An., p. 6, which answers the question. It is this: when a fact is declared in a decree, where there was a *bona fide* contest, the presumption as against third persons is in favor of the fact, and the third party who seeks to avoid its effects must prove the fraud, error or collusion; but when it is a consent judgment the onus of proof is on the party who claims the benefit of the judgment. This, I believe, is the furthest the courts have ever gone in giving effect to judgments as against third persons not parties to the suit.

How monstrous and unjust it would be to require more of a third party is illustrated by this case. Suppose Goodrich had been tutor, but was indebted to his wards, and to defraud their creditors he and his wards combined and confessed a judgment for a large sum in his favor with the recognition of a legal mortgage to antedate all

other mortgages on the property. How could the negative of the indebtedness be proved by strangers? Third persons would be at the mercy of tutors and their wards if they had contemplated the fraud in time to register their mortgage before the others.

Fortunately, in this case, the pretended claims for which the clerk recognized a legal mortgage were never recorded; and, notwithstanding the assurance with which it was announced in argument that the tutor's mortgage did not have to be recorded, that it was a tacit mortgage and not required to be recorded before 1870, I maintain that it was as essential to record such a mortgage as any other, and it always was so.

A mortgage is called tacit, not because it need not be recorded, but because it springs from the law, like privileges.

The article 3297 of the civil code of 1825 declares:

"Among creditors the mortgage, whether conventional, legal, or judicial, has force only from the time of recording it in the manner hereafter directed, *except in the cases mentioned below.*"

The words italicised above are omitted in the revised code of 1870.

The "cases mentioned below" are to be found in the succeeding article, 3298, of code of 1825, to wit: "A mortgage exists without being recorded, in favor of minors, interdicted and absent persons, on the property of their tutors, curators, and others over whose property the law grants them a tacit mortgage, either general or special."

The mortgage of the wife on the property of her husband for her dotal rights does also exist without being recorded. This article is omitted in the code of 1870. These omissions are because, under the constitution and laws since 1868, there are no exceptions. Tutor's mortgage for restitution of advances to his ward are not

among the exceptions and must be recorded. This is expressly decided in 22 An., 390. (Boisdoré *v.* Molcom.) After a careful examination of the law on the subject, the court in that case said: "The law seems to be positive that among creditors mortgages will have effect only from the date of inscription, except mortgages in favor of wives, minors, interdicted and absent persons." (22 An., page 391.)

The exceptions mentioned in the articles of the code above referred to in this brief. Art. 3317 (code of 1825) delares "all mortgages, whether conventional, legal, or judicial, are required to be recorded."

III. The sales under Goodrich's judgment (even if valid) as well as the sale by Packard, marshal, or other public sales of the property, were all absolute nullities because the plantation was mortgaged to Pickett and it did not sell at any of said public sales for enough to pay said mortgage, and the law forbade its sale under such circumstances (C. P., Arts. 679, 684; Henn De verbs, execution, *v.* (*d*) 3, p. 628, No. 1, *et. seq.*)

IV. The tax sales made 10th December, 1874, during the pendency of the suit by Lanier, public administrator, *v.* Foster *et al.*, and while Lanier was still public administrator of this property, as the property of George Foster and the property of J. H. Green, and for their own taxes, were transparent frauds to attempt to defeat Pickett's mortgage, and they were nullities.

The property did not belong to them, and could not be assessed and sold for their taxes to the injury of the mortgage creditors of the real owner.

Besides, the sale of one's property for his own taxes, when the purchase is made for his own benefit, does not affect mortgages against that property.

See the testimony of George Foster, where he attempts to explain that these tax sales were not made with fraud-

ulent intent, but for their convenience. Be that as it may, they could not affect Pickett's mortgage rights.

The tax sale of the property for Green's taxes, made 10th December, 1874, is shown to have been fraudulent and fictitious by these facts. On the 2d of August, 1873, his property was seized and sold by Packard, marshal, to Ezra Wheeler & Co. The law required the officer making sales of land in Louisiana to retain the taxes out of the price paid. Packard, marshal, did so in this instance. In his deed to Wheeler & Co. he states that "I retained '$422 for taxes,' and the purchasers returned the balance of the price in their hands," etc.

Now, about four months after this, this same property is sold for Green's taxes, and William A. Gwyn, Foster's brother-in-law, buys this property.

Remember, Green was the agent of Pickett's heirs to collect their debt. Yet he permitted this sale for taxes without notifying said heirs, and Ezra Wheeler & Co., merchants, permit this fine and valuable property, which they had just purchased, to be sold for Green's taxes. And they never redeemed it, but permitted the auditor to give a title ratifying the sale on the 14th day of July, 1875.

On the 16th of December, 1881, William A. Gwyn sold this property to George Foster for $5,000, and on the 24th of October, 1881, about two months before the sale of same property by Gwyn to him, Foster purchased it from Ezra Wheeler & Co. for $7,243 cash and the balance in two installments. No reference is made in this act to tax sale.

V. Of course the suit between George Foster and his wife can not affect the rights of the heirs of Pickett, which existed prior to their rights. It is not necessary to notice that suit, therefore, farther than this—it, like the tax sales, and the dismissal of the suit and the mar-

shal's sale, indicate the efforts of the defendants to fraudulently circumvent the plaintiff's rights, by shifting the title to the property through different persons, under the form of judicial proceedings, while all the time no change of possession of the property ever took place.

The property has continuously remained in the possession of Pickett's debtors and George Foster, from 1866 to the institution of the present suit in equity. (See testimony of Wyly and J. D. Tompkins.) And George Foster has enjoyed the fruits thereof.

But if it were necessary to attack Mrs. Foster's title a mere inspection of her pretended title would show its nullity as to creditors having a right to inquire into it.

Her debt is said to be something less than $3,000. Yet she causes property worth upwards of $40,000 or $50,000 (Foster took half of it for $36,000 and upwards) to be sold under her judgment, and she buys it, says the sheriff, for $10,306.93, that being two-thirds of the assessment, which sum the said Mrs. Mary J. Gwyn retained in her hands to pay said mortgages, and "I return this writ unsatisfied this 8th day of July, 1884; the costs in this suit, $53.50, having been paid in cash.—M. J. Powell, sheriff; by G. W. Foster, D. S.

With whose money did she pay the mortgages? Wives are not permitted to change the title to property from their husband's names to theirs in this manner. See Sparlock *v.* Mainer, 1 An., 302; Dennistown *v.* Nutt, 2 An., 483; 4 An., 65; Parroll *v.* Petrovie, 14 An., 601.

If it were necessary to attack that judgment it will be seen from George Foster's testimony that his wife had no valid claim against him on which she could have a suit for separation of property. He says he married her in October, 1874, in Brooklyn, New York, and that "she received on 1st July, 1872, from the estate of her sister $2,936, which amount was deposited with the firm of

Foster, Gwyn & Co., and for which sum the firm executed their note to her. On the dissolution of the firm I assumed the payment of the debt and the debt remains unpaid.—Ans. 23 and 24." Of course this is illegal evidence and is objected to, but if it were admissible it proves she had no right to claim a separation on that debt due her for money loaned to the firm of Foster, Gwyn & Co. before their marriage.

And the law forbade his making any contract with his wife after marriage. The contract by which he assumed to pay his wife the debt was a nullity. He does not testify when he assumed it—only when the firm dissolved. But his testimony in this part of the case (in favor of his wife) is clearly forbidden by law.

So is her testimony; but if it be admitted she testifies substantially to the same thing, and her testimony would alone stand to establish a contract exceeding $500, which the law forbids also. (C. C., Art. 2277.)

There is no other evidence that the husband ever received any money or assumed any debt except his own and her own testimony. Of course if she can prove up her claim she may confess judgment, which has often been decided not admissible.

Besides, the proof offered by her in the suit between herself and husband is inadmissible in this case; but if admitted it shows that George Foster was not embarassed. His property was ample to pay all his debts and hers and leave him a competency.

All this proves the animus or purpose of Foster to cover up his property, through judicial sales, to defeat plaintiff's mortgage.

But if Pickett's mortgage existed the sale would have been prohibited by Arts. 679 and 684 Code of Practice. The price bid did not exceed the conventional mortgages.

VI. The suit of Lanier, public administrator, interrupted prescription of the notes. (C. C., 3552; 24 How., 568, and the Louisiana cases then cited.)

Prescription had been previously interrupted by the acknowledgments of the debtors, as is proved by the testimony of J. W. Montgomery. (C. C., 3520.)

But it is contended that the testimony of Montgomery is inadmissible because he was their attorney.

I deny this. There is no proof that he was ever their attorney in relation to this suit or the notes involved in it. Montgomery says: "I had for some time been their legal adviser, and was often consulted by them as to their legal rights in other matters."

From this Mr. Boatner infers the communication was professional. I deny it, and there is no proof of it. What are professional communications? They are stated by Mr. Greenleaf to be communications "made to the counsel, attorney, or solicitor, acting for the time being in the character of legal adviser." (239, vol. 1, p. 274, 1st edition.)

"This protection extends to every communication which the client makes to his legal adviser for the purpose of professional advice or aid upon the subject of his rights and liabilities."

240 Greenl. Evidence, vol. 1; see also 244 Greenl. Evidence.

It is evident that Mr. Montgomery was never consulted or advised with by these ladies as counsel, attorney, or solicitor, or he could not have taken the notes for collection against them. The testimony of Montgomery is that they consulted him "in other matters"—not in regard to this. Nor could there have been any necessity for them to consult an attorney when they felt so anxious about paying their friend and benefactor.

In Howard *v.* Copley, 10 An., 505, Morrison, an attorney, was required to answer questions touching Copley's ad-

missions to him, although Copley was dead, on the ground that there was no proof that those admissions were made to him in the capacity of Copley's counsel. (See also 2 An., 926.) No objection was made or objection reserved to the question asked Mr. Montgomery in relation to these admissions. On the contrary, at the last term of the court it was urged as a matter of laches on plaintiff's part that the commission to take Montgomery's testimony had not been executed. A party should not be permitted to take the chances of getting evidence favorable to himself, and if disappointed then object to it.

Even if the admission was a confidential communication (of which there is no proof), still the client could consent to the counsel testifying under the textual provision of the code, 2283.

Neither is there anything of a confidential character in the admission that they owed those debts. (10 An., 505.) But, besides Montgomery's testimony, the makers of the notes acknowledge they owed the debt and executed the mortgage.

Prescription has been suspended since the institution of the suit of Lanier, public administrator, till within a few months before the institution of this suit in equity.

All acts or hindrances, coming from the debtor or defendant, which deprive the creditor of his remedy suspend prescription. (4 An., 170; Boyle *v.* Mason, 10 An., 553; Martin *v.* Batson, 4 An., 322; 6 An., 54.)

In case of fraud, or undue concealment amounting to fraud, practiced by a factor, or gross errors of fact or law, the principal is not barred by acquiescence or lapse of time from relief except from the date of the discovery of such fraud or error. (12 An., 20, Keane *v.* Brandon.) All these decisions are based upon the doctrine of "*contra non valentem agere nulla currit præscriptio.*"

Mr. Justice Story in his Equity Jurisprudence, p. 737, 1521, of vol. 2, says:

"Courts of equity not only act in obedience and in analogy to statutes of limitation in proper cases, but they also interfere in many cases to prevent the bar of the statutes when it would be inequitable or unjust. Thus, for example, if the party has been guilty of a fraud which has not been discovered until the statutory bar might apply in law courts of equity will interfere and remove the bar out of the way of the injured party. *A fortiori*—they will not allow such a bar to prevail by analogy in suits in equity when it would be in furtherance of a manifest injustice. (See also the opinion of Lord Redesdale on page 739, 2d Story's Equity Jurisprudence, note 2.)

Pre-emption.

VII. Pickett's mortgage was recorded in March, 1866, and reinscribed on 4th November, 1885.

If a mortgage be not reinscribed within ten years, all subsequent mortgages duly registered take priority over it, but the mortgage still exists if the property still remains the property of the mortgagor.

23 An., 276, Byrne *v.* Citizens' Bank; 24 An., 193, Aellet *v.* Woods; 22 An., 336, Gegan *v.* Bowman; 22 An., 205; 29 An., 315, Adams & Co., *v.* Daunis; 30 An., 11, Watson *v.* Bondurant; 8 Wall., 292, Patterson *v.* De la Ronde.

No mortgage was attempted to be given on the property, except one by J. H. Green (who did not own the property) to Foster, Gwyn & Co., and under which the marshal's sale to Ezra Wheeler & Co. was made in 1873. The mortgage was given in 1870.

The mortgage of Pickett's heirs was then not ten years old, and they have never been reinscribed, while Pickett's was reinscribed as above stated.

VIII. The pretended erasure of Pickett's mortgage was unauthorized and fraudulent.

Recorders can not be ordered to erase mortgages unless their holders be made parties.

French *v.* Prieur, 8 R., 97 and 130; 2 An., 114; 20 An., 425, Romes *v.* Blanc; 29 An., 548, Mechanics' Building Association *v.* C. L. Furgusen, 8 An., 58. See Civil Code, Arts., 3371, 3372, *et seq.*

Counsel for defendant asserted with a good deal of confidence, apparently, that the sheriff and recorder had no discretion, but must cancel all subsequent mortgages under article 708 of the Code of Practice, and they cited 1 An., p. 10, Passebond *v.* Prieur.

To begin, it is well to note that the case cited is against their client in this suit.

The court says the case relied on by the recorder in that case, to wit, 6 La., 454, was different from the case then under consideration because it was a consent sale.

Well, our case is a sale under a consent decree and is like the one in 6 La. But it is submitted that article 708 does not authorize either the sheriff or the recorder to destroy or extinguish a third person's mortgage without even notice to him.

The article declares, "if the himself has a privilege or special mortgage which is preferable or anterior to other mortgages existing on the property sold, the sheriff shall," etc. Now in this case, if the sheriff had a certificate of mortgage from the recorder, and he must have had to make a valid sale, and must have read it in an audible voice, the purchasers must have known, as well as the sheriff, that the seizing creditor did not have the first or prior mortgage; for Goodrich's mortgage was never recorded and never existed. The case in 1 An. is like a good many of Judge King's decisions, very loose. The cases he cites in support of his decision do not support what he says. The question is what effect will the certificate of the sheriff of the release of mortgages and the erasure of said mortgages have if the

seizing creditor did not have the first or anterior mortgage?

The proposition is too clear for discussion, and is fully answered in the reported cases. (See 8 R., 97–130; 2 An., 114; 8 An., 58; 29 An., 548.) Any law of a State which would authorize such spoliation would be a violation of the Constitution of the United States, which forbids the taking of property without due process of law, and violation of the State constitution, which forbids the diverting of vested rights.

IX. Foster, as public administrator, is responsible for all losses or injury to the heirs of Pickett in consequence of his acts or his failure to protect their rights, and his real estate is bound by the registry of his official bond therefor, the law giving a legal mortage thereon for the purpose.

It was also denied in the oral argument that the registry of the bond of the public administrator operated as a mortgage on his property. Sec. 351 of Revised Statutes says:

"All bonds given by the tax collector of the State and by persons charged with the collection of the parish taxes and by all public officers, whether State or parish, who by existing laws, or those to be hereafter enacted, may be required to give bond, shall be accepted by the recorder, etc.

"Bonds when registered as above provided shall operate from and after the date of the registry as a mortgage upon all the real estate of the principal obligor therein in the parish where he exercises his office," etc. (Revised Statutes of 1870, p. 74.)

"An administrator is the trustee of the creditors; his first duty is to them, and his imperative obligation is to watch over their interests."

George Foster knew, of course, that his predecessor, Lanier, in the office of public administrator, had filed

the suit on the mortgage note of the heirs of J. C. Pickett against himself and others to foreclose the mortgage. Isn't it singular that he should have sought the appointment, under the circumstances, even to gratify Mr. Delany who promised to attend to the duties of the office for him? It is not strange that after his appointment, when he represented the plaintiff and was himself the real defendant, he should have caused the suit to be dismissed by having himself called at the court-house door and failed to answer? Foster says he was not present, that he was in Ohio at the time. The minutes of the court says he was present and said he knew of no such estate, etc. See the minutes of the court in the Record.

But concede that Mr. Foster was absent, has he ever repudiated the acts of his attorney and *quasi* deputy public administrator? Did he ever notify Mr. Montgomery, who had filed the suit, of his intention to have the suit dismissed, or that he had had it dismissed? No. But on the contrary, he claims the benefit of the dismissal of the suit and pleads prescription, etc.

The responsibility and liability of the trustee has been frequently passed upon by the Supreme Court of the United States. (See 16 How., 543; 6 Wheat., 481; 3 How., 333; 11 Wall., 217.)

There should be a reversal of the decision of the Circuit Court and judgment in favor of the plaintiffs as prayed for in their bill in said court.

Respectfully submitted,

ROBERT E. DEFOREST,
For Appellants.

149 U.S. 505

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 175.

J. D. PICKETT AND OTHERS, APPELLANTS,

vs.

GEORGE FOSTER AND OTHERS.

Brief on Behalf of George Foster and Wife.

S. F. PHILLIPS,
F. D. MCKENNEY,
For Mr. and Mrs. Foster.

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No. 175.

J. D. PICKETT AND OTHERS, APPELLANTS,

vs.

GEORGE FOSTER AND OTHERS.

Brief on Behalf of George Foster and Wife.

This is a suit brought in the United States circuit court for western Louisiana, to foreclose an alleged mortgage upon land lying in the parish of Carroll, Louisiana,—the defendants being the mortgagors; and other persons (*Foster &c.,*) who are alleged to be purchasers with notice, or otherwise trustees for the plaintiffs.

The plaintiffs are the heirs and next of kin of the original mortgagee, who resided in the District of Columbia when the mortgage was given, but died a resident of Kentucky.

The full presentation of the facts upon the record made in the brief of the learned counsel for the plaintiffs, would have rendered it unnecessary in any case that these should be repeated here in detail.

It will be submitted indeed that many of the matters set forth in the record are of no concern in considering the defenses relied upon, viz: *Laches, Statutory prescription of the debt, and Want of proper inscription, and of timely reinscription of the mortgage.*

A preliminary outline of the principal features of the case in relation to the above defenses and definite statement of such defenses is as follows:

The bill was filed on the 30th of November, 1885, in order to enforce an alleged act of mortgage upon land lying in Carroll parish, Louisiana,—the mortgage being in form a conveyance in trust (folio 25) *passed* upon the 16th of January, 1866, at Memphis, Tennessee, in order to secure three promissory notes (for $18,000 in all) that were delivered on the same day, (folio 29,) but were dated upon the 1st of January, 1866, and payable at one, two, and three years,—*i. e.*, the latest upon the 1st of January, 1869. The mortgagors were Mrs. Ricketts and Mrs. Bell, two young ladies, sisters, and widows;—being by remarriage the present defendants Green and Scanlan. The payee of the notes was one J. C. Pickett, who died in July, 1872, leaving children of full age, one of these being J. D. Pickett, one of the plaintiffs,—the other plaintiff being a grandson of the payee, and the two plaintiffs being now his only "heirs." No payment, or in-

deed serious demand therefor, in respect to the notes was made until the time when this suit was brought.

The defendants Foster and wife are the only persons actually interested in opposition to the claim of the "heirs" of J. C. Pickett; for the mortgagors are "utterly insolvent;" (folio 21) and the Fosters are "third parties" to the mortgage, who, in consequence of business transactions with the mortgagors,—entered into in 1868 and subsequently,—purchased the land in question in 1873 at a price of more than $56,000.

The only reply made by the plaintiffs to the plain and apparently full defense in the record, *i. e.*, laches, prescription, and inscription as above suggested, is founded upon certain conduct ascribed to George Foster as "public administrator" for Carroll parish from his appointment on the 29th of April, 1875, until 1877, when that office was abolished in Louisiana;—by which conduct it is argued that he became constructively *a trustee* for the heirs of J. C. Pickett; and therefore, as is also argued, is not entitled to the benefit of such defenses.

Upon this it is to be remarked:

1. Upon the 29th of April, 1875, at which date the supposed duty of Foster as public administrator originated (folio 292), the notes in question, payable as above, and therefore also the mortgage, *were already prescribed*, and therefore annulled, by the *five years* article to that effect contained in the Louisiana Code and set out hereinafter. By becoming a trustee one does not at that date involve himself *retrospectively* in special relations to his *cestuys que trust.*

If at the origination of his office a trustee is already entitled to a defense against a claim belonging to those who subsequently become his *cestuys que trust*, he does not lose that defense by the change of relation. For instance, acceptance of such office does not *per se* work a revival of a debt then subject to the bar of prescription.

2. The principal observation in this respect, however, grows out of the details of the connection of Foster with the office of public administrator. From an outline of these it will be seen that to charge him with the duties of trustee for the plaintiffs here, would be, as we respectfully submit, a mere burlesque upon equity.

In brief, those details are as follows:

In 1873 the notes and mortgage in question were sent by the heirs, for collection, to an attorney in Carroll parish (folio 357.) Three years previously a statute, given hereinafter, had been enacted creating public administrators in each parish of Louisiana, whose right it was, under certain circumstances, *to be appointed by the parish judge* to administer intestate and other estates. At that time one Lanier was public administrator for Carroll parish. Thereupon, in December, 1873, (folio 38,) the attorney brought suit upon the notes and mortgage, in the name of Lanier as public administrator, without, as the Louisiana statute requires, having had him previously appointed by the parish judge to administer the estate of J. C. Pickett then deceased (folio 405.) That suit was brought against Foster as third possessor of the land, together with the mortgagors. An exception was pleaded thereto, to the effect that Lanier had not been appointed to administer the

Pickett estate (folio 44.) Nothing was done about this exception until December, 1875, when the plaintiff was called, and the suit dismissed (folio 46.) In April, 1875, Lanier ceased to be public administrator, and Foster was appointed in his place (folio 5.) Thereby the latter, who was already a formal and also substantial defendant in the Lanier suit, became officially the person who in the discretion of the parish judge, supposing no valid objections to exist, might have been appointed to administer the Pickett estate. Nevertheless, no application on the part of the "heirs" was made to him or to the parish judge in that connection (folio 410); nor, indeed, were the notes and mortgage ever called to his attention otherwise than by the suit in which he was already *legitimus contradictor*. His situation as public administrator did not prevent some other person from being appointed to administer the Pickett estate; and of course, did not obstruct the present plaintiffs, as the *succession* of J. C. Pickett, from bringing suit against him as third possessor aforesaid. However, the attorney for the Pickett "heirs" did not either resist the dismissal of the Lanier suit, or take any other step toward enforcing the claim, but filed the papers in his own office, and allowed them to remain there apparently forgotten until the fall of 1885 when, through other attorneys, the present suit was undertaken.

The above facts are obtained exclusively from the case made by the present plaintiffs upon the record,—their bill, exhibits, and proofs. And they are controverted by nothing else in the record. No personal intervention by or on behalf of Foster to lull the vigilance of the plaintiffs is pretended. He held adverse possession of the land openly and continuously. The Lanier suit was evidently a nullity. It could

have no effect upon any one of the defenses of Foster,—whether upon the ground of *laches* in the plaintiff, or the *five years prescription* of the notes, or the *improper inscription of the mortgage*, or the *lack* of its *reinscription within ten years*. There is therefore no ground whatever for suggesting that at any time he became constructively or otherwise a trustee for the Pickett estate.

Believing, therefore, that the above matters constitute a full defense for Mr. and Mrs. Foster, we think it unnecessary to pursue the other transactions of buying and selling, which have accompanied the title of this land since 1866; and which are remarked upon at some length in the brief of the learned counsel for the plaintiffs. As a commission merchant in New Orleans, Foster began to have dealings with the mortgagors in 1868, and these very probably upon faith in their title to the land in question. But he acquired no lien or other "real right" in that land until 1870, and no estate therein until 1873. By the latter date his *bona fide* and undisputed right against the mortgagors for advances amounted to some $56,000. After that date he was, of course, deeply interested, and authorized to do anything that was lawful and fair in order to secure that title. And, after 1873, when the Lanier suit had warned him that the Picketts might press the alleged mortgage claim, some steps of that sort were taken,—and justifiably. If the present suit had been brought before the 2d of January, 1874, when the five years' pre-emption began, it might have been important to consider their validity. But upon and after that date it seems that such efforts to bolster his title became

superfluous,—especially so by the 4th of December, 1885, the day upon which Foster and wife were cited in this suit. (Folio 166½.)

The defenses above alluded to when stated in definite shape are as follows:

1. The alleged mortgage is in form and substance a "*conveyance*" *in trust*, and therefore, because of its inscription in a *mortgage* book, (folio 34), it has at no time been valid in Louisiana, as against third parties. (Thibodeaux *vs.* Anderson, 34 La. Ann., 797.)

2. *Admitting*, for the sake of argument, that the instrument in question is a mortgage within Louisiana, then in order to affect third parties it must by statutory law have been reinscribed within ten years after its first inscription. (Bondurant *vs.* Watson, 103 U. S., 281, 288.) But in fact it was first inscribed on the 12th of March, 1866, and was not reinscribed until the 4th of November, 1885.

3. Upon the same admission, (that the instrument is a mortgage,) it was *passed* in order to secure promissory notes only. By the statutory law of Louisiana such notes are prescribed in five years after they become payable, and thereupon, by the same law any mortgage securing them is also prescribed, as being a mere incident to the notes. In the present case the latest due of the three notes became prescribed on the 2d day of January, 1874, whilst this suit was

not brought until nearly twelve years afterwards. Chapman *vs.* Bank, 31 La. Ann., 395.

4. The plaintiffs, or their ancestor, might have brought an action like the present at any time after January 1, 1869, and indeed, for a considerable part of their debt after January 1, 1867. They are, therefore, justly chargeable with *laches;* McKnight *v.* Taylor, 1 How., 161. And in this connection it is a material circumstance that it is neither alleged nor proved that the notes in question were given for a *valuable* consideration. 2 Pom. Eq., sec. 684. It will be observed at this point that this is not a contest betwixt a legal estate, upon one side and an equitable one on the other; for the plaintiffs have ignored the legal estate in their trustee *Ricketts*, and proceed upon the ground of their superior equity only.

5. As public administrator for Carroll parish, Foster owed no duty to the heirs of J. C. Pickett; either in respect of the Lanier suit brought on behalf of that estate and then pending, to which by those heirs he had been made party *defendant;* or in any other respect. Louisiana Statutes of 1870, No. 87.

6. Finally, inasmuch as the notes, and incidentally the mortgage, were prescribed on or after January 2, 1874, then, even if it could be supposed that in any respect or to any degree Foster after becoming public administrator assumed quasi trust relations toward the Pickett estate, still seeing that he was not appointed public administrator until April 29, 1875, *i. e.*, nearly sixteen months after the prescription

had arisen,—such supposed trusteeship could not prejudice his already existing immunity from this claim.

To develop these defences,

1. *The alleged mortgage is in form and substance a "conveyance" in trust;* and therefore inasmuch as it was not duly *inscribed* as such, but only as a mortgage, it has at no time been valid as against *third parties.*

This is a point to be settled, of course, by the local law of Louisiana exclusively. Under that law a mortgage creates only a "real right" and not an *estate*, as at common law. It is therefore no "conveyance."

It is to be observed here that the learned counsel for the plaintiffs has referred (Brief, p. 12) to the case cited below from 38 *La. Ann.*, as "reiterating" the *jurisprudence settled* in Louisiana before the case cited below from 34 *Ann.*,—suggesting thereby that the last-mentioned case is no longer an authority to the effect that deeds in trust must be registered as "conveyances." We therefore quote from the opinion of the court in 38 *Ann.* to show that such *reiteration* is not upon any point which affects 34 *Ann.* as authority here, except it may be in the way of *advancing* such authority. For 34 *Ann.* was a case in which a deed in trust to secure a debt, passed *within Louisiana*, had been registered in a *mortgage book.* In discussing this, the court said, that such conveyances when passed within Louisiana would not avail against *either* the parties thereto, *or* third parties (the actual question before the court being as to the latter only); although if passed outside of the State at a place where they would

be valid as mortgages for local property, then *as between the parties thereto* they might be valid in the same way, but not *as to third parties.*

If in 34 *Ann.* no reference had been made to a supposed difference betwixt conveyances executed *within*, and those executed *without*, Louisiana—the subject-matter thereof being property situated in the State,—the decision itself, as to a conveyance within the State, would have been understood to apply to all conveyances no matter where executed. However, a distinction was taken that is immaterial here, and for all questions under the article quoted below,—which covers only *third persons.* But even the distinction so hinted at is done away with in 38 *Ann.*,—which holds that an instrument which in form and substance is a mortgage (and therefore a *conveyance*) *within Alabama*, and was executed there, is not *a conveyance* for land lying within Louisiana. Whether this would create a "real right" in Louisiana—(the point in 34 Ann. and the present case,)—was not decided,—the case not raising that question.

The cases just referred to are as follows.

Thibodeaux *vs.* Anderson, 34 La. Ann., 797 (1882.)

This case involved a contest betwixt *Boyd* and *Goodchaux* over a residue of money left in the sheriff's hands after a sale under executory process.

Boyd claimed under an alleged mortgage, anterior to that of Goodchaux and registered in the *mortgage* book. That conveyance had been *passed* in the parish of St. James, in order to secure $29,950, evidenced by notes; in consideration of which and of $10, Anderson granted, &c., to Boyd

as trustee the property in question: a provision being inserted that on payment of the debt the deed should be void; and also that in case there should be a failure to pay, the trustee should have the property sold in order to satisfy the debt, and then to pay to Anderson any balance.

On the other hand the mortgage to Goodchaux was regular.

The court held that as against *third persons* the deed in trust to Boyd, even if it had been executed outside of the State, was invalid: although *as between the parties thereto*, if it had been executed outside of the State and at a place where by law it would have been regarded as a mortgage, it might have been valid. That its registration *as a mortgage* was no notice to third persons.

The money was awarded to Goodchaux by *Bermudez, C. J.*, and two other judges, against *Todd, J.*, who regarded the instrument as substantially a mortgage. (P. 805.)

Upon *rehearing* this judgment was affirmed.

C. D. Miller *vs.* J. L. Shotwell & *al.*, 38 La. Ann., 890, (1886), was a case of *slander of title*, brought to try the title involved.

Upon the 17th of October, 1860, J. L. and R. H. Shotwell then residing in Alabama, had executed within that State to one Hatch of Louisiana, a common-law mortgage upon land lying in the latter State, in order to secure the purchase-money therefor. Afterwards Hatch sold the land to T. P. Miller, and he in turn to the plaintiff. On the 14th of December, 1860, Hatch conveyed the land to the defendants, and they had been in possession ever since.

The court held that the effect of the conveyance of October,

1860, was to be decided by the law of Louisiana; and that under that effect "the mortgagor has not ceased to be the legal owner of the property." * * * "We require no argument, or reference to any authority, to justify the conclusion that it [the mortgage] could not have the effect of operating a divestiture of title. Hence, under its effect the mortgagor has not ceased to be the legal owner of the property. * * * We note the reliance of the plaintiff on the case of Thibodeaux *vs.* Anderson, 34 Ann., 797, but that decision has no application here. The court there held that a common-law mortgage executed in Louisiana, and intended to affect property in that State could have no effect against third parties as a mortgage. In this case we construe an instrument executed in Alabama, avowedly a mortgage under the jurisprudence of that State, but intended to affect property in this State; and we hold that it could not have that effect here even between the parties thereto, which is claimed for it under the laws of Alabama, and that as a mortgage it did not operate a divestiture of title."

2. The second of the above defences requires no more to be added here, than that it has been duly pleaded by Foster and wife (203 and 209). See 103, U. S., 281, 288.

3. *The alleged mortgage was incidental to the promissory notes secured thereby;* and therefore was prescribed in their prescription, that is after January 1, 1874.

This defence has been duly pleaded by Foster and wife (203, 209).

In this connection we refer to the following statutes and cases.

[The quotations from the Louisiana Code, are numbered as in the edition of "1889." The accompanying numbers in parenthesis are those of the editions of "1838," and "1870."]

Article 3278 (3245): "Mortgage is a right granted to the creditor over the property of the debtor for the security of his debt, and gives him the power of having the property seized and sold in default of payment."

3282 (3249): "The mortgage is a real right in the property bound for the discharge of the obligation."

3284 (3251): "The mortgage is necessary to a principal obligation which it is designed to strengthen, and of which it is to secure the execution."

3285 (3252): "Consequently, it is essentially necessary to the existence of a mortgage that there shall be a principal debt to serve as a foundation for it; hence it happens that in all cases where a principal debt is extinguished the mortgage disappears with it." * * *

3457 (3420): "Prescription is the manner of acquiring the ownership of property or discharging debts by the effect of time and under the conditions regulated by law. Each of these prescriptions has its special and particular definition."

3459 (3422): "The prescription by which debts are released is a peremptory and perpetual bar to every species of action real or personal when the creditor has been silent for a certain time without urging his claim."

3464 (3427): "Prescription may be pleaded in every stage of a cause even on an appeal; but it ought to be pleaded expressly and especially before final judgment."

3466 (3429): Creditors and all other persons who may have an interest in the acquiring of an estate, or the extinguishment of an obligation by prescription, shall have a right to plead it even in case the person claiming such estate or bound by such obligation should renounce such right of prescription."

3528 (3494): "The prescription which operates a release

from debt discharges the debtor, by the mere silence of the creditor during the time fixed by law, from all action real or personal which might be brought against him."

3529 (3495): "This prescription has also the effect of releasing the owner of an estate from every species of real rights to which the property may have been subject, if the person in possession of the right has not exercised it during the time required by law."

3530 (3496): "To enable the debtor to claim the benefit of this prescription it is not necessary that he should produce any title or hold in good faith; the neglect of the creditor operates the prescription in this case."

3540 (3505): "Actions on bills of exchange, notes payable to order or bearer, &c., are prescribed by five years, reckoning from the day when the engagements were payable."

3541 (3506): "The prescription mentioned in the preceding article, and those described, &c., run against persons residing out of the State."

Chapman *vs.* The Bank of Louisiana, 31 La. Ann., 395.

In this case it appeared that the plaintiff had previously obtained a judgment against one Nelson in the third district court of New Orleans, which judgment had been recorded upon the 29th of March, 1867, creating thereby a *judicial mortgage.* Shortly afterwards Nelson became bankrupt, and upon the 16th of July, 1868, a sale of the property in question was made by his assignee to the defendant. Upon the 16th of March, 1877, *two* suits were brought by the plaintiff, the one to revive the above judgment, and the other,—being that above named,—an *hypothecary* action upon the mortgage. The former having been brought in another court than that in which the judgment had been rendered, had been dismissed on that account at the same term of the court at which the opinion and judgment were rendered to which attention is now asked, *i. e.*, April 18, 1879.

Referring to that the court said (p. 396):

"That judgment [the one sought to be revived] not having been revived in the manner provided by law, before the lapse of ten years from the time it was rendered, is now *prescribed*, and was *prescribed* on the 30th of March, 1877. (Act of 1853, R. C. C., art. 3547.) * * * The mortgage, whether conventional or judicial, is but an accessary right, which cannot exist without the principal right or obligation which it secures; and it is elementary in our law that the mortgage falls with the principal obligation to which it is accessary. (R. C. C., 3285. Calderwood *vs.* Jacobs, 4 Ann. 509; Lebeau *vs.* Sage, 8 Ann., and authorities cited, p. 477; Troplong, Prescription, 2, No. 659; Troplong, Hypotheques, 4, 878, bis.

"The accessary, the judicial mortgage, was not prescribed at the time this suit was brought; but the judgment on which alone the hypothecary rights of the plaintiff depended was rapidly approaching its extinction, and it perished at the end of ten years from the 29th of March, 1867, the date at which it was signed and became formal. Citation in the suit to revive the judgment would not have interrupted the prescription of the hypothecary action, nor did the citation in the hypothecary action interrupt the prescription of the judgment.

"'L'interruption de la prescription de l'hypotheque n'interrompe pas la prescription de l'action personelle. Troplong, Hypotheque, 4, 878 bis.'

"'Lorsque l'immeuble hypothequé est passé dans les mains d'un tiers detenteur, les actes d'interruption de l'action personelle entre le debiteur n'interrompent pas la prescription a l'egard du tiers detenteur; reciproquement l'interruption de l'action hypothecaire n'interrompe pas la prescription de l'action principale. Troplong, Prescription, 2, No. 659.'

"When the judgment was prescribed the judicial mortgage ceased to exist; and by the prescription of the judgment, and the judicial mortgage, the hypothecary action was extinguished.

"'Si la prescription a eteint l'obligation personelle et l'action qui en deroule, l'action hypothecaire sera eteinte par contre coup. L'hypotheque etant l'accessaire de l'obligation personelle, doit necessairement tomber avec celle-ci. * * *

Il faudrait se tenir a cette decision, quand même l'on aurait conservé par des actes interruptifs l'action hypothecaire. Troplong, Hypotheque, 4, 878, bis.'

"An ordinary action will not be affected by the lapse of time while it is pending; but if during the pendency of the suit the right asserted and sought to be enforced should be extinguished, the action could no longer be maintained."

LeBeau *v.* Sage, 8 Ann. 477, (1852.)

In this case mortgage property had gone *into the hands of a third person*, [as in the present case]; and it was strenuously argued [citing from the Code Napoleon, to that effect,] that although if the property had remained in the *hands of the debtor*, prescription of the notes secured thereby would have *perempted* the mortgage, yet that it was different in the case before the court; and that there the hypothecary action was no longer a bare incident, &c.

The court said:

"The first ground of error assigned is that the principle that the accessary falls with the principal obligation only applies so long as the property mortgaged remains in the hands of the original debtor; and that when it passes into the hands of a third person having notice of the encumbrance, and against whom the hypothecary action was brought, as it was in this case, before prescription accrued upon the principal obligation, the mortgage becomes isolated from, and does not fall with it.

"This distinction is in direct conflict with article 3252 of the Code, which provides that in all cases where a principal debt is extinguished the mortgage disappears with it. It also conflicts with articles 3249, 3494, and 3495, as expounded by our predecessors in the case of Shields *vs.* Brundige, 4 La., 326."

4. *The fourth defense is on the ground of laches.*

The extent to which these alleged creditors trifled with

their alleged claim against the land in question for nearly twenty years, subjects the transaction of January, 1866 to fatal objections in regard to that "*reasonable diligence*," and to very strong suspicion in regard to that "*conscience*" and "*good faith*," required by courts of equity. (McKnight's case, 1 Howard, 161, 168.) So far as at all real that transaction was probably one in which two impressible young ladies, who had been school girls about 1859 and who were then absent from home, orphans, and widows, were prevailed upon by some ill-adviser to make three notes for $18,000 in all, secured upon their paternal estate, and send these into what they may have been led to believe, were *the flush money markets* further north, for sale. It may be also that their fancy was, to use the proceeds thereof in stocking and cultivating their plantation; and thus to raise once more the large and profitable crops which they had seen made by their father a few years earlier, and so in due course easily to pay the three gradually increasing annual installments into which the debt was to be divided—*increasing*, i. e., as the land should become restored under their management! Mr. Pickett, the nominal payee of the notes, seems to have acted his part not dishonorably, although very imprudently. For, probably finding that he could not dispose of the notes as intended, he thereupon, instead of destroying or returning them, filed them and the mortgage away, and probably forgot their existence. He died six years later at 80 years of age, and in limited pecuniary circumstances, and his children were in like circumstances immediately afterwards (folio 363.) There is no suggestion on the record that

within the last half dozen years of his life, any pecuniary disaster had befallen him.

In January, 1867, (Exhibit H, folio 92,) when the first of these notes had just become due, the young ladies, apparently under some apprehension in respect to that transaction as to which they had heard nothing during the past year, were moved to get rid of the mortgage cloud thereby created, by means of confessing two judgments to their former *tutor* for a claim which by law would create a mortgage antedating that of 1866; and thereupon agreeing to a sale of the plantation in satisfaction thereof. Accordingly this was done, and the *record* of the mortgage of 1866 "*erased.*" It may be that all the technicalities of law required to make this latter proceeding effectual were not observed,—but as to the animus and intention of the ladies thereabouts there can be no doubt. And the only important question at this point is as to the light thereby thrown upon the state of mind in January, 1867, of two ladies who are now said to have borrowed only a year before some $18,000 or so upon the mortgage thus cavalierly dealt with. It must be admitted that the ladies seem to have been but ill-advised all along the record:—from the mortgage to their brief joint answer (folio 213). In the latter they are made to say very cursorily that they "borrowed the money and executed the mortgage" of 1866. If they could say that, except in the way of signing a short answer which affected no one but themselves, and the contents of which they probably had not considered,—why were they not examined thereupon as witnesses on behalf of the plaintiffs? There is too much that is romantic about the

theory upon which this bill is based, to allow a serious plaintiff, and particularly his learned counsel, not to have felt that it was, under all the circumstances, of prime importance to show that the act and notes of 1866 were both genuine and authentic,—the record of a real business transaction, as therein set forth. And the witnesses were within reach, and not unfriendly; although again widows, living in a strange place, and besides utterly insolvent (folio 21). A failure to examine them is one of the minor matters in this case that attracts observation.

However, after *erasing* the mortgage of 1866 the young ladies, who had then divided the land betwixt them and married again, found, personally or by their husbands, other means for making use of the plantation, viz., by "advances" upon future cotton and other crops by merchants at New Orleans. Things went unprosperously notwithstanding; and by 1873 they owed for such advances some $56,000 (folios 451, 454,) to the defendants Foster and Wheeler; Foster, at their instance, subsequently taking up the debt due to the latter. By August, 1873 the ladies and their husbands had parted with all their interest in the land (folios 139 and 454.)

It is singular that during that same month of August there was taken in Kentucky the first step that looked to an assertion that J. C. Pickett, who had died in 1872, had left property. The defendant J. D. Pickett then became administrator upon the estate of his father (folio 355). And in September of the same year (folio 357), as is also singular, the husbands of the mortgagors appeared in person in Kentucky to instigate proceedings for the enforcement of that mortgage. In other words, the debt for borrowed money,

theretofore totally neglected by the needy creditors, was to be roused into activity by the virtual debtors, not however to be made out of themselves in part or all, but out of a *third possessor*, from whom since the act and notes of 1866 they had procured, upon faith in the title which they had asserted thereto, (folio 451,) and fortified by the *erasure*, (folio 503,) about $56,000;—and by an arrangement accompanying that instigation the principal debtors were also to benefit to the extent of one-third part of all that the administrator of J. C. Pickett might recover from Foster and Wheeler, *who equitably were standing in place of sureties for themselves!* Connecting the answers as above put into the mouths of the two ladies, with undisputed facts in this record, their share in the plantation (worth some $20,000—folio 19) had up to September, 1873, stood them in stead for about $80,000, money advanced and borrowed. Nevertheless, it was thought right to carry this benefit still farther by the questionable arrangement just mentioned.

Did the administrator J. D. Pickett believe that the notes which he found among his father's papers evidenced a real debt? The girls who had signed these certainly had not done so in order to wind up some preceding business which had left them in debt. They had been too young for such *business*. His father could hardly have *lent* them money; for he himself tells us that he left "*but little money*,"—and nothing is suggested as to his having lost property betwixt 1866, when he was seventy-four years of age, and 1872, when he died. (Folio 363.) By "*little money*" the immediate connexion shows that the administrator meant *little estate*, for he was excusing himself for not having raised money enough to pay the expenses of a suit.

The farther the Pickett generation were removed from the date of the Act of 1866, the less appears to be their disbelief in its reality. For *the Father*, who was party to the act, seems to have regarded it as *nothing: the Sons* in turn were sceptical about it,—one of them, J. D. Pickett, although at one time roused into something like activity (and promising, *at the first pass*, so to say, to give two-thirds of the $20,000 thereby due, as compensation for its collection, well secured though it was, in a wealthy and conservative community a few hours distant from his home,) yet after the papers had been carried away for collection fell upon sleep again over the matter for ten years longer. And his deposition in this case (see folios 355 to 371, and Exhibits thereto, A, & B, folios 394, &c.) is more interesting for what leaks through, than for what is held forth.—Lastly, the *Grandsons*, who could have had no contemporaneous knowledge of the matter, enjoy convictions about the reality of the debt which were not participated in by their parents, and at which their grandfather would probably have laughed. And these last appear to be the true authors of the suit now pending (folio 379),—the only real one in that connection that has ever been brought.

It is to be added that the administrator transmitted the notes, &c., in 1873, by the hands of the husbands Scanlan and Green to Louisiana for collection, entrusting to these agents the selection of an attorney, obviously in order that they might make such terms with the latter as would insure themselves an equal portion of the two-thirds *compensation* (folios 395, 397). Upon receiving the notes the attorney (see his deposition, folios 404, &c.), brought suit in December, 1873, (folio 35) without observing the plain statutory direc-

tions as to the proper plaintiff; and upon having his attention drawn thereto by an exception to his petition, (folio 45,) seems to have become discouraged; and then, having let the suit remain *in statu quo* until December 1875 without an effort to amend or to replace it in the interest of his client, submitted to its dismissal. Whilst that sham suit pended, the *five years' prescription* arose. That circumstance, of course, would have dissuaded a Louisiana lawyer from preparing for another suit after the dismissal. Under whatever persuasion it may have been, he in fact made no such preparation. He seems indeed to have heard of the dismissal of the first suit only *casually*, (folio 406,) and did nothing about further collection; but left the papers in his office for some ten years longer, apparently undisturbed.

5. *Mr. Foster's duty as public administrator in Carroll parish, after April, 1875, did not involve him in the relation of trustee for the plaintiff.*

The first section of the Louisiana statute of 1870, above referred to, the only part of it that is important here, is as follows:

SEC. 1. "That the governor of the State of Louisiana shall appoint a suitable person to be known as the public administrator for each and every parish in the State, whose duties and powers shall be as follows: In all intestate successions, when there is no surviving husband or wife, or heir present or represented in the State, the public administrator of the parish shall be appointed by the judge of the proper court to administer the same."

In 1877, the office of public administrator was abolished within Louisiana, except for the parish of Orleans. *Acts of* 1877, page 111.

We submit as beyond doubt, that in Louisiana public administrators, *as such*, had no power to administer particular intestate estates, and ordinarily owed no official duty to persons interested in such estates.

The plaintiffs themselves have introduced evidence which shows upon its face (folios 302 to 337,) that the course of practice in Carroll parish was to require an *appointment by the parish judge* to precede action by a public administrator as to particular estates. And so are the cases, Succession of Cabrol, 28 Ann., 602, and Succession of Henry, 31 Ann., 555.

Morawetz tells us that the rule in most of the States is the same: Vol. 1, p. 396.

Nor was Foster under any duty to the heirs *to apply for administration* upon the estate of J. C. Pickett. The words of the statute (as above) imply that even if he had not been in point of pecuniary interest opposed to the Pickett claim, he could not so long as Montgomery *represented the heirs in the State*, have been appointed administrator of the Pickett estate; unless, perhaps, at the instance of the latter. But it seems moreover that as *third possessor* no court would have appointed him such; and even that it would have been *sinister* in him to have applied.

It is to be added that his appointment as public administrator after receiving the notice which the suit of Lanier had given him of the Pickett claim, was not at all censurable, because:

1. That place was unsought by him. See Judge Delony's testimony, (folios 487, &c.)

2. It did not obstruct an appointment of some one else as administrator of Pickett, and

3. It was not at all in the way of a full remedy for the heirs then or at any time since, in courts of the State or of the United States; as witness this very action.

6. *We submit the sixth proposition stated above as being of itself a perfect practical reply to the argument of the plaintiffs founded upon the suggestion of a trusteeship in Foster.* The point is a short one, and we will leave it as heretofore stated, without further argument.

S. F. PHILLIPS,
F. D. MCKENNEY,
For Mr. and Mrs. Foster.

Office Supreme Court U. S.
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CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

Term No. 175.

JOSEPH DESHA PICKETT et al, Appellant,

vs.

GEORGE FOSTER et al, Appellees.

REPLY BRIEF FOR APPELLANTS.

Filed by leave of the Court.

JEFFRIES & EARLE,
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Supreme Court of the United States.

OCTOBER TERM, 1892.

JOSEPH DESHA PICKETT *et al*, Appellant,
vs.
GEORGE FOSTER *et al*, Appellees.
} Term No. 175.

[NOTE.—In consequence of the break down of the calendar and the unexpected call of this case, appellants are authorized by the court to file this brief.]

The appeal is from a decree of five lines by his honor, Judge Boarman. It recites none of the facts upon which he bases his judgment, assigns no reasons and discusses none of the important legal questions involved. It is to be regretted that a case of so much importance, involving conflicting views of the facts, as well as legal questions, should go before the court for consideration without the fullest oral argument. We hope, however, by a carefully prepared statement of the facts with reference to the record to be of some service to the court in getting at the truth upon which the merits of our case depend.

Summary of the Facts.

This suit is brought to recover the sum of $18,000 and interest for money loaned to the defendants, Scanlon and

Green, January 1, 1866, evidenced by their three promissory notes, and secured by a mortgage on their interest in the Morgan plantation, now claimed by the defendant, Mary Gwin Foster, wife of George Foster, whose service connected with this case will further appear.

It is admitted that no part of the money so borrowed has been paid.

The notes do not bear interest until after maturity, and thus show that the loan was a matter of pure accommodation by Mr. Pickett to these two widowed ladies.

2. It appears from the evidence in the case that in 1855, one Frederick M. Goodrich became the tutor of Agnes M. Morgan and Narcissa J. Morgan, minor children of Jonathan Morgan, of said parish, deceased, and on the 20th day of April, 1859, the said Ferdinand M. Goodrich filed an account as their said tutor in the proper court, in which he showed that he was indebted to his said pupils in the sum of $1,263.21.

Previous to that date he had filed no account of any description, although the estate of his said pupils was yielding a large revenue annually.

3. In 1861, said pupils became emancipated, and assumed control of their estate, but the said Goodrich failed to file a final account or any account whatsoever, showing what disposition he had made of the revenues derived from said estate which had come into his possession as the tutor of said pupils, or what expense he had incurred on their account as such tutor.

4. On January 1, 1866, the said Agnes M. Morgan having by marriage become Agnes M. Ricketts, and the said Narcissa J. Morgan, having by marriage become Narcissa J. Bell, their husbands being dead—borrowed of James C. Pickett $18,000, and executed and delivered to him their three joint promissory notes in $5,500, $6,000 and $6,500 respectively, payable in one, two, and three

years respectively, and secured the payment of the same by said mortgage.

5. In the year following, viz: on the 25th of January, 1867, the said Ferdinand M. Goodrich, as tutor of the makers of said notes, filed in the office of the clerk of said court for said parish, a petition against each of them, in which he alleged that he submits an account which shows "a balance due and owing to your petitioner," from said Narcissa J. Bell the sum of $903.79, and from said Agnes M. Ricketts the sum of $3,498.71, and prays judgment against each of said mortgagors for the amount of said alleged indebtedness respectively, and further prays "that he be discharged from all further responsibility and liability as tutor aforesaid and his bond cancelled," etc (Record, pp. 41–44).

6. Accompanying said petitions, said Tutor Goodrich filed with said clerk a waiver of service by his said pupils respectively, with a confession of indebtedness as charged in said petitions, and a concurrence in the prayer for judgment against each of them, for the amounts he alleged in his petition to be due from them respectively, but no itemized accounts.

This waiver, agreement and confession of his said pupils was made and dated January 11, 1867, fourteen days prior to the date and filing of said petition, upon which Goodrich was afterwards "discharged from said trust," and his bond cancelled (Record, pp. 42–45).

7. On the same day that the said petition was filed in the case of Agnes M. Ricketts, January 25, 1867, the *clerk of said court* rendered a judgment against her in favor of said Goodrich for $3,490.71, and ordered that "the legal or tacit mortgage in favor of said tutor be recognized to date from the 3d day of December, 1855" (Record, p. 45).

On the following day a judgment for $903.79 was

rendered by said clerk against said Narcissa J. Bell, in favor of said Goodrich, with a similar order, "that the legal or tacit mortgage in favor of said tutor be recognized to date from December 3, 1855" (Record, p. 42.)

8. On the 21st day of June, 1868, a writ of *fieri facias* was issued by the clerk of the court aforesaid, directed to the sheriff of said parish, directing him to seize and sell the property, real and personal, rights and credits of the said "Narcissa J. Morgan, now Green"; and on the same day said sheriff seized "all the rights, title and interest" of said Narcissa J. Morgan (afterward N. J. Bell, now N. J. Green), in and to the said mortgaged premises, and on the 5th day of September, 1868, said sheriff sold the same at public sale to J. H. Green, *the husband*, said Narcissa J. Bell, for the sum of $1,156.64.

On the said 21st of June, 1868, said clerk of the court issued to said sheriff a writ of *fieri facias* directing the seizure and sale of the property, real and personal, rights and credits of Agnes A. Morgan (Ricketts) to satisfy said judgment of her tutor Goodrich, whereupon said sheriff seized "all the right, title, interest and claim" of the said Agnes A. Morgan in and to the said mortgaged premises, and sold the same at public sale, on said 5th day of September, 1868, to said Ferdinand M. Goodrich, the then attorney of defendant, George Foster, for the sum of $1,734 (Record p. 47).

On the 18th day of December, 1868, said Goodrich conveyed said interest, so purchased, to the said Agnes M. Ricketts, its former owner, for the sum of $4,000 (Record, p. 51).

By virtue of these conveyances, the said Agnes M. Ricketts became reinvested with her said interest in said mortgaged premises, and the interest of the said Narcissa J. Bell vested in her husband, John H. Green.

February 5th, 1873, said Agnes M. Ricketts (Scanlon) conveyed said interest to George Foster, defendant.

August 2, 1873, the interest of said John H. Green was conveyed by deed of U. S. Marshal to Ezra Wheeler & Co.

October 6, 1873, said Ezra Wheeler & Co. agreed to sell the said interest to defendant, Geo. Foster, and in October, 1881, by deed conveyed the same to said defendant, George Foster (Record, p. 84).

July 5, 1884, both of said interests were sold as the property of said defendant, George Foster, and conveyed by sheriff's deed to Mary Gwin Foster, wife of said G. Foster, who now claims to be the owner of said mortgaged premises.

Goodrich's Alleged Mortgage.

The tutorship of Ferdinand Goodrich, the attorney for George Foster, defendant, began in 1855.

The revenues which he derived as such tutor from the estate of his pupils were more than sufficient for their maintenance, and at the expiration of four years he was indebted to them in the sum of $1,263.21; this appears from his account filed April 20, 1859, being the only account filed by him during the period of his tutorship, having all that time failed to file any annual or even final account.

More than eight years afterward, in June, 1867, he filed petitions for a judgment against his pupils for $4,402.50, stating an aggregated indebtedness unitemized of said pupils to him which had accrued between April 20, 1859, and March 15, 1862, but of which account there is no record.

In 1861 these pupils were emancipated and took the control and management of their estate into their own hands. Whether or not any part of this indebtedness was incurred after the enfranchisement of the pupils and before the date at which it is charged, is not disclosed.

The fact remains, that from 1855 to 1859, the revenues derived from said mortgaged plantation were more than sufficient for the support of the pupils, while, in the two years—from 1859 to their emancipation in 1861—the tutor alleges in effect that he expended in their maintenance, not only the entire amount of said revenues, but the $1,263.21 which he owed them in 1859, and in addition thereto the sum of $4,402.50, being an expenditure in about two years of $5,665.71 in *excess* of all revenues from said estate.

It is to be presumed that Goodrich knew the amount of his expenditures between April, 1859, and March 15, 1862, when his account closed, equally as well as he did in 1867, more than five years afterward, when he submitted it with his petition for judgment. But there is no intimation that any indebtedness existed, or any claim or demand for payment of that or any other amount. During those years his former pupils were managing their estate, and presumably able to pay said indebtedness, but in so far as the record discloses they were not advised that said indebtedness existed.

The tutor had filed no annual account nor any final account on their emancipation, both of which were required by the law of the State, which he totally disregarded.

In the mean time his pupils had borrowed in 1866, $18,000, and executed a mortgage on said plantation to secure its payment. This mortgage was dated January 16, 1866, and the notes were made January 1, 1866.

With this large amount of capital on hand his said pupils were abundantly able to liquidate any indebtedness to their said tutor, which, as he now claims, had been due him since 1862, but which he had never thought worth while to mention to them, or any one else, so far as the proof discloses; and it was not until June 25,

1867, a few days after the maturity of the first note to Pickett, that this after thought crystalized into a scheme to defraud Pickett of his security, and seize the property for himself and his client Foster.

He had not yet been discharged from his tutorship, although his pupils had been emancipated six years before. He took them into his confidence and procured by some means, their admission of the debt and a consent for judgment. This was done fifteen days before he filed his petition. He filed his petition against his pupils in his official character as their tutor, and on the same day obtained from the clerk—no court being then in session—a judgment for the amount claimed, and by the same judgment was discharged from his tutorship and relieved from his official bond as tutor. This was not all,—the clerk further directed that the discharged tutor's legal or tacit mortgage be recognized to date from December 3, 1855; this was necessary in order to become a lien on the plantation with priority over Pickett's mortgage, although up to that time, no one had any information of the occasion for this tutor's secret mortgage, because there was no intimation that there was any debt or liability which it could secure; the only account filed by Goodrich was in 1859, when he showed that he was indebted to his pupils in $1,263.21.

Seven years afterwards he discovered that his pupils were indebted to him in 1862, the year after they were emancipated, to the amount of $4,400 and upwards.

This discovery was made by him and his co-conspirators, the mortgagors (his pupils) a few days after the maturity of the first note secured by the Pickett mortgage. To secure the property to the conspirators there was no time to be lost, prompt action was necessary, and immediate steps were taken. On the 25th of January, 1867, he filed petitions against each of his said pupils, praying

judgments for said indebtedness, accompanying said petitions with waivers "of service of said petition, copies of accounts and vouchers, citations, etc.," with an acknowledgment of the indebtedness, and a concurrence in the prayer of the petition, purporting to have been signed by the said pupils on the 11th day of the same month.

On the same day the petitions and waivers were filed, he induced the clerk of the court to enter up a judgment against one of said pupils, and on the following day the said clerk wrote up a judgment against the other, and in both instances said clerk, without solicitation, "recognized" the tutor's legal or tacit mortgage to date *from December 3, 1855.*

These judicial proceedings took place when no court was in session—they were conducted exclusively by Goodrich and the clerk.

Execution followed these pretended judgments, the property was sold by the sheriff, Goodrich buying one interest, and Green, the husband of one of the mortgagors' taking the other.

There were still obstacles to be overcome—the Pickett mortgage was on record, and the sheriff's deed conveyed the property subject to its lien; the tutor's tacit mortgage had been disposed of by the sale of the property under the judgment for his benefit.

To meet the difficulty another scheme was contrived and carried into execution. Mr. Ferdinand M. Goodrich, attorney for George Foster (Rec. p. 186), induced the deputy recorder of Carroll Parish, without the production of any order of the judge or court, or the consent of the mortgagee, to erase the Pickett mortgage from the mortgage record on the 19th day of December, 1868 (Rec. p. 208–9).

Having accomplished this he "assured" his client Foster that Mrs. Scanlon's title was good, she, being one

of the mortgagors, had purchased from Goodrich her former interest in the mortgaged premises (Rec. p. 186).

At this juncture we find the said mortgagors reinvested in their original interests, that is to say, the said Agnes M. Ricketts (now Scanlon) held her interest in her own name, and the said Narcissa J. Bell (now Green) held her interest in the name of her husband, both believing that by the tactics and management of Foster's attorney, their late tutor, Goodrich, the said interests were released from the lien of the Pickett mortgage, and that by the crafty manipulation of judical forms they had succeeded in defrauding Pickett out of his money, which they confessedly owed and still owe his estate.

Participancy of George Foster.

At this juncture, defendant George Foster himself assumed control of the operations which his attorney, Goodrich, and confederates had set on foot with the object of securing this plantation, and defrauding Pickett of his money which had been expended upon its improvements by the mortagors, and for which purpose the loan had been procured.

Foster's relations with the mortgagors were close and intimate. His attorney, Goodrich, was their tutor from 1855 until 1867, and continued as their friend and counsellor through all the transactions, sales, transfers, mortgages and other fraudulent proceedings necessary, in Foster's opinion, to divest Pickett's lien, and secure to Foster the fruits of the conspiracy. As late as December 10, 1872, in the contract for the sale of A. M. Scanlon's interest in the mortgaged premises to George Foster, it was provided that "the above agreement is subject to the approval of * * * Ferd. M. Goodrich on the part of A. M. Scanlon" (Folio 469).

The Pickett mortgage was recorded in Carroll Parish in March, 1866, the notes were dated January 1, 1866, Goodrich was not discharged from his tutorship until January 25, 1867. He had, as such tutor, full knowledge of the existence of these notes and this mortgage. He was the attorney and adviser of Foster, and what he knew about this business Foster knew. And, although Foster states in his answer (folio 187), that he had no knowledge of the existence of the Pickett mortgage, he confesses under oath (folio 452), that "he had been advised by eminent counsel and believed there was no validity in their (Pickett's) claim." Also in his answer (f. 202, p. 87).

Agnes M. Scanlon (Ricketts), who had been sold out by the sheriff in 1867, for an insignificant debt claimed by her tutor, was able in 1868 to establish a credit with George Foster or his firm to the amount of $19,000. Her entire estate at that time consisted of her interest in the mortgaged premises, which had been sold by the sheriff to Goodrich, Foster's attorney, for $1,734, and then sold back to her by Goodrich for $4,000, on credit.

Two years before she and her sister had received $18,000 from Pickett. In addition to this were the revenues received from the plantation, which, in themselves, were more than sufficient to maintain both of them prior to their marriage.

Foster testifies he commenced doing business with Mrs. Scanlon in 1868 and that Ferdinand Goodrich was his attorney; that on the 23d of May, 1870, Mrs. Scanlon owed his firm $19,000 (folio 449).

With such abundant means at her disposal, and such unbounded credit, it is to be wondered at, that she permitted her estate to be sacrificed by the sheriff to satisfy a pretended judgment for a stale and outlawed claim

that first saw the light on the day the judgment was rendered. That Mrs. Scanlon owed George Foster $19,000, or any large amount, is improbable, unsupported by proof and inconsistent with the then existing conditions and established facts.

Like the fabricated claim of Goodrich, her tutor, it was improvised as a means for another transfer of her interest under form of legal proceedings with the object of defrauding Pickett. Accordingly, an act of mortgage was passed to Foster and his partners by Mrs. Scanlon to secure the payment of this alleged indebtedness, followed by a conveyance of the premises to defendant Foster, whose attorney, Goodrich, had, in the meantime, procured the erasure of the Pickett mortgage.

James C. Pickett, the mortgagee, died July 10, 1872 (folio 372); his son, Joseph D. Pickett, was appointed administrator May 20, 1873. On the 27th of September, 1873, said administrator placed in the hands of the said Robert M. Scanlon and John H. Green the notes and mortgage of the said Agnes M. Rickets and Narcissa J. Bell, as the agents of said administrator to employ attorneys to enforce the collection of said notes (folio 357).

It did not occur to Scanlon and Green, or either of them, that it was necessary to inform the administrator that the mortgaged premises had been sold by the sheriff of Carroll parish, and that Green claimed to own one-half of the plantation and Scanlon's wife the other half.

The administrator had no acquaintance in Louisiana, except with Green and Scanlon, and he believed and trusted them. He was a clergyman by profession and the State Superintendent of Education in Kentucky, and wholly engrossed with his professional and official duties. He had never been in the State of Louisiana, and did not know the name of any attorney in Carroll Parish, and he addressed the letter of appointment in blank, trusting to

his agents, Green & Scanlon, to select the proper attorney (folio 396). All this was done at Lexington, Kentucky, three years after Green and Scanlon's wife had mortgaged the entire premises to Foster and Gwin (folios 505 and 509).

The notes and mortgage were placed in the hands of attorney J. W. Montgomery, who, on December 23, 1873, instituted legal proceedings for the collection of said notes (folio 35).

This action was brought in the name of Benjamin H. Lanier, then the Public Administrator of said Parish, as plaintiff. On the 30th of December, 1873, said George Foster was made a defendant in said cause (folio 43).

During the pendency of the suit, the said B. H. Lanier resigned the office of Public Administrator, and the said George Foster, defendant in the pending action, applied for and secured the appointment of said office for himself, gave bond (folio 48), and on the 29th of April, 1875, took the oath of office and entered upon the discharge of its duties (folio 52).

On the 4th day of December following the case was dismissed in open court "no person appearing to prosecute this suit (folio 47)."

B. H. Lanier, Public Administrator, and George Foster, Public Administrator, being called to prosecute, Lanier answered through his counsel, "that he is no longer Public Admisistrator, and George Foster answers that he knows of no such succession as is professed to be administered" (f. 40, p. 20), and thus, by his refusal to perform an official duty he procured the dismissal of a suit in which he was the principal defendant.

By the prostitution of his office, which he had secured for that purpose, he consummated the fraud, as he hoped and believed, which he and his co-conspirators had labored so diligently to accomplish.

Sheriff's Sale to J. H. Green and Fred. M. Goodrich a Nullity.

The sales by the sheriff of the interests of the two mortgages to Green and Goodrich were made under *fieri facias* issued by *the Clerk of the Probate Court* upon his own money judgments on the case of Goodrich, their tutor, and this judgment was *coram non judice* and the levy and sales were and are null and void—*mere brutem fulmen.*

The probate court is not a court of general jurisdiction. Its powers are limited by law, and it has no jurisdiction except by express grant. No power is presumed in it. On January 25 and 26, 1867, these mortgagors were not under tutorship. They had been emancipated and in possession of the property since 1862. They might have gone into a court of general jurisdiction and confessed a judgment or have permitted one to go by default, but the probate court had no jurisdiction to enter such a judgment or issue *fieri facias* thereon. Had they been still under tutorship the probate court might have ordered a sale of property to change investment or to pay debts. It might do so with property belonging to a succession; but in either case it would have made *a decree or order of sale.* In the brief of Mr. DeForrest (27, 28), the statute prescribing the powers of clerks of the probate court is fully set out. They can order family meetings and homologate their proceedings, issue orders for filing of tutors' accounts and homologate them, etc., after 30 days' notice, *on the first Saturday in the month.* When did a first Saturday ever occur on the 25th or 26th of a month?

A mere sheriff's deed is not a title to real estate. It must recite a valid execution of a court of competent jurisdiction whereon it is based. In ejectment on a sheriff's title not only must such a deed be proved, but such an execution also.

This Mr. Fred M. Goodrich seems to have had much power over public officers. He could have them render judgments, issue executions, sell property without a pretext of valid authority, and cancel mortgages at his own sweet will. He could not, however, infuse power and jurisdiction into the clerk of a probate court to render money judgments and issue *fieri facias*. This whole proceeding is a very bungling fraud of a willing but clumsy trickster.

Now as this want of jurisdiction to render the judgment and issue the *fieri facias* whereon the sale was based is knocked out, the whole superstructure of the subsequent sales must fall.

On September 5, 1868, Green bought at a bogus sale, under an invalid *fieri facias* based on a judgment that was *corum non judice*, and on August 2, 1873, his worthless title was sold by the U. S. marshal to Ezra Wheeler & Co., and by them conveyed to George Foster, who, having through his attorney Goodrich, as he conceived, got the property freed of the Pickett mortgage, proceeded to shuffle it out of the reach of his creditors into the hands of his wife, and had it resold by the sheriff under a judgment obtained by her against him and bid in by his wife.

The strength of a chain is measured by that of its weakest link, and this whole chain of title is of the exact value of that conveyed under the nullity of a judgment and *fieri facias* of the clerk of the probate court. It is manifest that no title has passed out of Narcissa J. Bell, and that the same remained in her at the time of the commencement of this suit subject to the equities of the Pickett mortgage as between mortgagor and mortgagee.

In January, 1867, Agnes A. Morgan (Ricketts–Scanlon) suffered a similar judgment by the same court, and in June, 1868, the clerk issued a similar unauthorized execution against her property. On September 5, 1868, it

was sold to the alleged plaintiff in execution (tutor Goodrich), who, on December 18, 1868, for the named sum of $4,000 conveyed it to said Agnes Ricketts (Scanlon), and then advised his client, George Foster, the defendant, that her title was good. On February 5, 1873, said Agnes Ricketts conveyed to George Foster.

It will be observed that under the head of defense 3 (Appellees' brief, p. 12) it is admitted that the notes were prescribed not earlier than January 1, 1874, and it will also be specially noted that before this time client George Foster and Attorney Goodrich had completed all of their sleight-of hand performances; for on October 6, 1873, Foster had the agreement of Ezra Wheeler & Co. to convey to him the Narcissa J. Bell (Green) interest, and on February 5, 1873, he had received a conveyance from Agnes M. Ricketts (Scanlon) of her interest. If he had secured them through the line of a legal sale under a valid execution, issued upon a regular judgment of a court of competent jurisdiction, it is still manifest that he held them subject to the unprescribed mortgage of Pickett to secure the payment of his unprescribed notes.

Then, if such was Foster's worthless and fraudulent title, how much better title did his wife, Mrs. Mary Gwin Foster, get when she sued him and sold his title and bought it? Naught from naught and nihil remains.

Beginning on page 17 my learned friend, whom I greatly respect and admire, permits his cultivated fancy to run riot over several pages, vainly imagining many funny things and throwing out frequent dream-like suggestions. After Tutor Goodrich, the lawyer, and his client Foster had taken hold of these young women, immediately on their default on the first of the three notes,

and showed them how to defraud their aged friend and too-trusting benefactor, who had loaned them so large a portion of his accumulations for his old age, and for one, two, and three years without interest, it seems hardly fair, but quite in keeping with their whole conduct, that it should now be suggested that this venerable gentleman, who represented his country at foreign courts and served it honorably in so many positions, just as his son was serving his state, was only a "nominal payee" in some scheme to sell the notes here or "further north." It is true there is naught in the record to warrant or excuse any such suggestion, but still it is altogether worthy of such men as we have seen Foster and Goodrich to be.

It is immaterial to the case how the mortgagors used the money. The title to their estate can not be divested by sale under *fieri facias* issued by the clerk of a Probate Court, even in response to Mr. Goodrich's wand; and that is the sole basis of the title of defendant Foster and wife; whilst Mrs. Scanlon and Mrs. Green in their verified answer admit "that they owed the money and mortgaged the plantation of J. C. Pickett, as alleged in said bill," and the issue reverts to the case as between the mortgagors and heirs of the mortgagee's.

George Foster, being in possession by such title as we have already seen, was on December 30, 1873, made a party defendant to this suit (R., p. 18). Things look serious, but the situation must be met. Foster applies for the office of public administrator. On April 28, 1875, he receives Governor Kellogg's commission as public administrator for Carroll parish. He qualifies May 6, 1875. November 29, 1875, defendant's attorney moves the court that B. H. Lanier, public administrator, and George Fos-

ter, public administrator, be called to prosecute the suit. "George Foster answers that he knows of no such succession as is professed to be administered (R., f. 46 p. 20). Was that true or false? Mr. Montgomery the complainant's attorney testifies (R., pp. 168–69): The first I knew of Foster's appointment to that office, was the dismissal of the suit. * * * He was aware of the existence of the suit, because he had been made a party thereto, by supplemental petition.

Counsel urge that Foster's conduct is free from criticism. This can not be. Is the act of the attorney of George Foster, the defendant, separable from the non-action of George Foster, public administrator? Believe if you can that Foster did not seek this office because of his relations to this suit, what course should he have adopted when he saw his personal interest directly in conflict with his public duty? If there were no heirs of Pickett interested in this succession, then this debt escheated to the State, and her officer, her public administrator, had a legal duty which was manifest, and the course for an honest official was too plain for doubt. That duty could not be discharged by permitting this suit to be dismissed.

Goodrich's Wand.

We shall not revert to the manner in which tutor Goodrich resurrected accounts in 1867 against his wards, who had been emancipated in 1862, by which he changed the balance which was against him when he rendered his only account in 1859. We shall not further comment on the mode by which he led the facile clerk of a probate court to give him a tutor's mortgage running back to 1855 so as to be clear of Pickett's mortgage, and then to issue a *fieri facias* on a money judgment which he had no jurisdiction to render. Under this fraudulent *fieri facias* he induced the sheriff to sell these interests on September 5, 1868, and bought one himself. Mrs. Bell's interest was

sold to John H. Green, whom she shortly afterwards married. But now, having had the equity of redemption sold under the *fieri facias* of the clerk of a probate court, he saw that his work was not yet complete. There was still a barrier to a complete formal title. There was the record of Pickett's mortgage. A mortgage that no one pretends was then prescribed; to secure notes which Foster's attorney does not contend were prescribed until January 1, 1874. That record must be removed. So tutor and attorney Goodrich invokes his wand again, and we find the deputy recorder as facile in his hands as was the clerk of the probate court. The following is indorsed on the face of the record of mortgage.

"Erased in full evidence the return of the sheriff in the suit of Ferd. M. Goodrich, tutor, against Agnes M. Ricketts and Narcissa J. Bell, on file in the office of the clerk of the district court, *and the demand of Ferd. M. Goodrich that the mortgage be erased.* Floyd, La., December 19th, 1868.

"A. G. BELDON, *D'y Recorder.*"

Please observe that the sheriff's sales under the judgment of the probate clerk were made September 5, 1868, and this attempt at cancellation was made December 19 following.

Having now, as Goodrich thought, cleared the title and conveyed such title as he got at the sheriff's sale to Mrs. Ricketts for her notes for $4,000, he advises his client Foster that her title is good, and on May 23, 1870, Foster and Gwyn take a mortgage on her interest for $19,000 and one on the interest bought by John H. Green under similar *fieri facias* for $10,000.

There is one more chapter in this book of frauds. On page 12 of their brief counsel contend that the mortgage was prescribed by the prescription of the notes, but they do not contend that these were prescribed until January 1, 1874.

On December 23, 1873, public administrator Lanier brought suit to foreclose this mortgage. No one contends that either the notes or mortgage were then prescribed or affected with any other infirmity. If the sheriff's sale at which Goodrich and Green bought had been under a valid *fieri facias* of a court of competent jurisdiction, only the equity of redemption would have passed and the property would have remained bound by the mortgage. So the defendant Foster, who had been made a party to the suit by Lanier, got himself appointed public administrator and dismissed that suit.

"Where a mortgage has been cancelled without authority on the books of the recorder of mortgages, even on a regular but false certificate given by the notary public, the mortgage exists unimpaired even against the innocent vendee who has bought on the faith of a clear certificate of mortgage."

20 La. Ann., 425;
8 Robinson, 130.

"The erasure or cancellation of a mortgage by the recorder will not bind the mortgagee when done without his knowledge, and he may enforce his rights."

Building Association *v.*, Furguson 29 La. Ann., 548.

Is This a Mortgage?

In view of the nature and condition of the title which Mrs. Foster claims, and in view of the fraud through which that title was obtained, as abundantly shown, as well as its legal invalidity for want of authority in the court to grant the judgment on which the title from the sheriff rests, it is not a very material question whether the instrument relied upon in this case as a mortgage and recorded in the mortgage book, is really a mortgage or a deed of trust; but it is due to the court, without anticipating its judgment on this point, that we should afford it such assistance as we may be able to do in the investigation of it.

We maintain that this is unquestionably a mortgage. It is to be construed by the laws of Louisiana, where the property lies.

In Ricks *v.* Goodrich (3 Ann., 212), speaking of a deed of trust executed in another State, the court holds that under section 10 of the Code, it is to be construed by the laws of Louisiana, and says:

"That such instrument, being an agreement by which the mortgage property *is authorized to be sold extra-judicially,* is not valid under our laws so far as third persons are concerned, whatever may be its effect between the parties."

Counsel for Foster strive to avoid the effect of the recording of the instrument on the ground that it is not a mortgage, and is therefore erroneously recorded in the mortgage book. He relies upon the case of Thibadeau *v.* Anderson (34 Ann., 797), and we invite the attention of the court to that case and to an examination of the instrument therein passed upon. It expressly provides that "should there be a failure to pay, the trustee is to have the property sold, and is to satisfy the debt and pay over to Anderson what balance may thereafter remain." This instrument, as decided in the case of Ricks *v.* Goodrich, providing for an extra-judicial sale, is not a valid mortgage under the laws of Louisiana.

But such is not the case with the mortgage set out on pages 11 and 12 of the record. It expressly provides that "in case they (the notes) should be paid at maturity, then this deed shall be null and void, and of no effect in law." But if they are not paid there is no authority of the trustee to sell. He is expressly required to "FORECLOSE this deed of trust and the interests of said grantees in the property aforesaid."

It is therefore not only a mere security for a debt, but it is to be null and void if the debt is paid; it retains the mortgagors in possession until default, it gives the trustee

no authority to sell extra-judically, and it expressly provides for a foreclosure. So that, decided by both cases above cited, under the laws of Louisiana, it is a mortgage and not a deed of trust.

It is too evident for argument by lawyers that a "foreclosure" can be had only by judicial determination, and where there is a provision for "foreclosure" there is not that authority to sell "extra-judicially" which is obnoxious to the laws of Louisiana.

This is conclusive that this instrument is a mortgage.

It is duly inscribed in the mortgage records as a mortgage, and the contention of the appellee (brief, 9) that it is a conveyance in trust is without force, and is not sustained by the case cited (38 Ann., 890), and the quotation is misleading. The syllabus of the case that is material here is as follows:

"Under our laws a mortgage does not of itself operate as a divestiture of title from the mortgagor to the mortgagee.

"The mortgagor retains the title, and under it will defeat claims of ownership set up by the mortgagee as resulting from the mortgage."

An examination of the case will show that the contention was that the mortgage had "the effect of operating as a divestiture of *title*.

Prescription.

The notes were payable in one, two and three years, and dated January 1, 1866; consequently prescription would begin to run against them respectively in six, seven and eight years, as it could not begin until their maturity. We have already seen that on February 5 and October 6, 1873, George Foster had the title of the mortgagors so far as the same could be obtained under a sheriff's sale on a judgment by the clerk of the Orphan's Court. Counsel for appellee claims prescription from

January 1, 1874. Then not only were all of these suits, sales, and conveyances before prescription, but besides this—

On Decembey 23d, 1873, B. H. Lanier, as Public Administrator, began his suit, and it was dismissed on default of his successor on December 4, 1875 (Rec. p. 21).

This was interruption of the prescription. Prescription must be "uninterrupted." In St. Romes *vs.* Cotton Press Co. (127 U. S., 621) the court says:

"So that there *has never been an uninterrupted period* of the ten years in which prescription could run. It follows that the defence of prescription fails." Citing Code, 3518 (3484); 2 Martin, 79, 83; 4 La. Ann., 467, 470; 29 ib. 298, 300.

So in this case the plea of prescription as to the notes fails absolutely.

The defendant, Mrs. Mary Gwyn Foster, pleads prescription of five and ten years, and that the mortgage "was not reinscribed within ten years after its original inscription in the mortgage records of E. Carroll parish, whereby the same became void and null as between the parties thereto.

We have seen that her title hangs upon the sheriff's deed under a judgment *coram non judice*; that her husband's title, which she bought at sheriff's sale, on her own judgment, for $2,980.76, only (R. p. 25) was obtained before any claim or contention arises that either the notes or mortgage were prescribed.

But as to the title of Mrs. Foster this is a question of fraud, and as to the fraud the statute does not begin to run until some knowledge of it. In his deposition (p. 152, fol. 362) Mr. Pickett testifies:

"I did not know that George Foster had been appointed public administrator, and I did not know until last September that the suit had been dismissed."

That was in September, 1885. It was then that Wil-

liam H. Pickett ascertained the facts. It was from them that Theodore J. Pickett learned the facts.

There is no contradiction of this evidence. There is no attempt to prove earlier knowledge. The Fosters content themselves with denying the fraud. The evidence is before you.

In the case of Kilborn *vs.* Sunderland (130 U. S., 518) Chief Justice Fuller, speaking for the court, said:

"Reasonable diligence is of course essential to invoking the activity of the court, but what constitutes such diligence depends on the facts of the particular case. Where a party injured by fraud is in ignorance of its existence, the duty to commence proceedings arises only upon discovery, and mere submission to an injury after the act inflicting it is completed can not generally, and in the absence of other circumstances, take away a right of action unless such acquiescence continues for the period limited by the statute for the enforcement of such right (DeBussche *vs.* Alt, 8 Ch. D., 286, 314). We hold that the complainant moved with sufficient promptness upon discovering the fraud, and that, although reposing confidence in their agents they may have neglected availing themselves of some source of knowledge they might have sought, the defendants can not be allowed to say that complainants ought to have suspected them and are chargeable with what they might have found out upon inquiry aroused by such suspicion."

Reinscription.

The mortgagors do not plead prescription. *Per contra*, "they aver * * * *that they owed the money* and mortgaged the plantation to J. C. Pickett, *as alleged in said bill.*"

A year or two before the filing of Lanier's suit (December 23, 1873), they talked to Judge Montgomery about the notes "and expressed their anxiety about their inability to pay them and of their wish to settle them to the satisfaction of the holder."

In Shields *v.* Schiff (124 U. S., 358), Justice Bradley

quotes with approval from the opinion of Justice Fenner as follows:

"They claim that the title is invalid as against plaintiffs on two grounds, viz.:

"1. That at the date of the foreclosure proceeding the debt of Schiff had been extinguished by prescription.

"2. That his mortgage had lapsed as to them by the failure to reinscribe it within the term prescribed by law.

"At this point we encounter other elementary propositions too plain for dispute establishing that whatever force the above objections might have if urged by third persons, they have none in favor of the mortgagor or his heirs. As to prescription, the mortgagor having failed to plead it, its effect is forever lost as to him and his heirs. As to the want of reinscription, neither inscription nor reinscription is necessary to preserve the mortgage as against the mortgagor and his heirs."

"Conceding that more than ten years have expired since the inscription of the mortgage, this does not destroy its effect between the contracting parties in such manner as to extinguish it.

"After the expiration of ten years the mortgagees have a right to reinscribe, subject in rank to the creditors who have inscribed their mortgages before the prior mortgage has been reinscribed and after the ten years have expired."

Liddell *v.* Rucker, 13 La. Ann., 567, 571.

Then the title of the Fosters being shown to rest upon a sale by the sheriff based on an invalid judgment, and to have been steeped in a series of fraudulent transactions wherein the husband of the present claimant was an active participant, and undisputed that action on the fraud is not prescribed (even if as to fraud it be held that prescription was pleaded, and it does not seem to be), this case stands now simply as an action between the mortgagors, who do not plead prescription, and as to whom reinscription is unnecessary, and the complainants, who are entitled to a reversal of Judge Boarman's decree and to an order for a decree of foreclosure.

N. Z. Jeffries
Wm. B. Earle
Of Counsel

149 U.S. 505

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CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 175.

J. D. PICKETT, &c., *vs.* GEORGE FOSTER, &c.

ADDITIONAL BRIEF FOR FOSTER AND WIFE.

We hope to be indulged by the Court in submitting a note or two upon the written argument of our learned friends Messrs. Jeffries and Earle, which, from circumstances that they could not control, has been submitted to the Court since the hearing of this case, and therefore without having been seen by ourselves.

1.

Referring to page 2d, top, of the brief in question:—It seems obvious that the promissory notes in suit were made upon the theory that *$15,000* was due on the 1st of January, 1866, and that 10 per cent. interest was to be paid annually

until they matured,—the latter being included in sums specified on the face of the notes. The only "accommodation" or other value given by J. C. Pickett was probably that of endeavoring, unsuccessfully, to negotiate these in the market.

2.

Under the Louisiana law all persons who in respect to any contract are not *parties*, are "third persons." (See "Signification of terms," at the close of the Louisiana Code; also Louisiana Reports, passim; and 104 U. S., p. 288.) George Foster is such therefore as to the Pickett mortgage, and is entitled to all the privileges of third persons under the Louisiana laws of *prescription*, *inscription*, and *reinscription*. A third person need not be a subsequent mortgagee. That he is not a "party" is enough.

3.

In Louisiana mortgages do not authorize *foreclosure*, but only *seizure and sale*. (See former brief for Foster, p. 13, art. 3278.) *Foreclosure* in our law presupposes a *conveyance*, with an incidental *equity* which needs to be cut off before the title of the bargainee becomes clear. The *trust* in the Thibodaux case, which provided that the trustee should "*have the property sold*," (*i. e.*, of course, "sold" according to law or in other words presumably, by "seizure and sale,") came nearer to the idea of a Louisiana mortgage, than would a trust providing, as in the present case, for "fore-

closure." The trouble there, however, was that the "act," (as here also,) constituted a *conveyance*. However it might be that a Louisiana court could construe a Tennessee or Alabama technical "*mortgage*" of Louisiana land as being in effect no *conveyance*, but merely *a Louisiana mortgage*, it was decided in Thibodaux's case that it could not do so where a trustee existed: that is, where a trustee had been created, there must have been a *conveyance*,—and not (*i. e.*, within the Louisiana registry law,) a mere creation of a *real right* in the land. (See brief of Messrs. J. & E., p. 20.)

4.

Foster's case as to prescription is in short as follows:

1. The mortgage became prescribed *entirely* as soon as the latest due of the notes was prescribed; and *partially* as soon as the first, and then the second, was prescribed.

2. Total prescription arose upon the 1st of January, 1874. If there had been a previous "citation" (which is what the Louisiana code requires to interrupt prescription,) the burden of showing it devolved upon the plaintiffs: *i. e.*, as against Foster, proof of a previous citation of himself was necessary; as he, a third person, is not concerned with interruptions of prescription in regard to the mortgagors inasmuch as the Louisiana law makes him as regards defense independent of the mortgagors. There is no evidence that Foster was cited in the Lanier suit, or otherwise, before January 1, 1874. The return of that citation on the record is

significantly left *blank* as regards the day (p. 19). Contrasted with the *carefully specified dates* of the citations of the other parties in that case, this is notable. In any event it prevents that citation from being proof of an interruption of prescription as to Foster.

3. Even if that citation had been timely, inasmuch as it occurred in a suit brought by one who was not a *privy* to the Picketts, and was by law wholly unauthorized thereunto, this could have had no effect upon the contemporaneous maturing of the *five-years* prescription. Bennington *vs.* Dinsmore, 2d Gill, 348; Wood, Lim., 623.

4. Again, supposing it to be possible that the Lanier suit did interrupt prescription, the latter, in any case, began to operate again towards the close of December, 1875, when that suit was dismissed; and thereupon became matured at least by January 1, 1881.

5. As to the *reinscription* of the Pickett mortgage:—The supreme court of Louisiana "has decided that under the positive law of Louisiana, nothing supplies the place of registry, or dispenses with it so far as those are concerned who are not parties to the mortgage, and that when ten years have elapsed from the date of inscription, without reinscription the mortgage is without effect." Bondurant's case, 103 U. S., at p. 188, bottom.

The above matters are briefly called to the attention of the Court because inasmuch as they appear to have escaped the attention of the learned and acute authors of the brief filed on behalf of the plaintiffs since the case was argued orally; it may be that they were not clearly presented in the brief already filed for Foster. As for the matter of *laches*, and as to the propriety of Foster's conduct whether as public administrator or otherwise, these are left to the impressions legitimately springing from the record, and from what has been submitted heretofore. We beg to suggest that it tends entirely to deprive the expressions "fraudulent," and the like, of that just weight which their utterance in courts of justice even by counsel, should carry with it,—to cast them at a party whose conduct has been so blameless as that of Foster. If these epithets could be traced to the plaintiffs themselves, it might serve a good purpose to speak with these, without epithets, as to their appearance upon the record as compared with his. For example, amongst many other remarkable things, they have not ventured to allege or attempt to prove that the notes of January, 1866, were given for value; any more than to question, by allegation or by evidence, the assertion that the land which they expect to secure by some magical effect of mere pieces of inked paper that had been blown about, as it were, unregarded, for many years in Tennessee, the District of Columbia, Kentucky, and elsewhere, cost Foster on the other hand, in 1873 more than $56,000:—they, in the meanwhile, standing by, and doing nothing for many years to prevent or to qualify the natural effect in business circles of the *fact* (leaving its *validity* in point of law a question,) of Goodrich's *erasure* of the recorded inscription of their mortgage.

We close by observing, in reply to passages in the briefs for the plaintiffs, that the suits and the judgments which gave Goodrich his *supposed* tacit mortgages and right to *erase* were begun and rendered in January, 1867; whilst Goodrich's connection with Foster did not begin until 1868. (Folios 93 to 104, and 449, 450.)

PHILLIPS & MCKENNEY,
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